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# FBI LAW ENFORCEMENT BULLETIN

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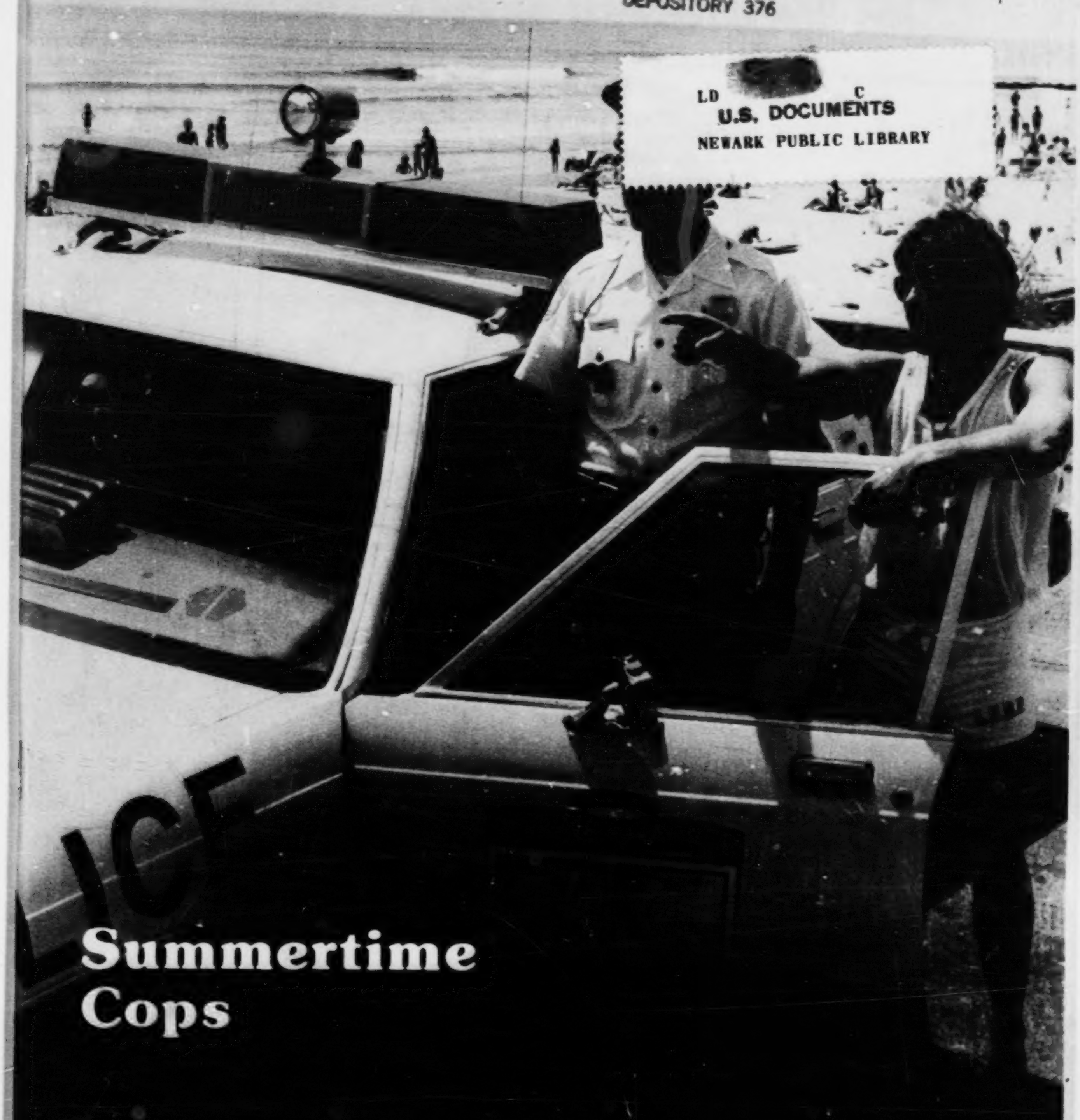

## Summertime Cops

# Director's Message

Last fall, the President of the United States told the International Association of Chiefs of Police he intended to use his office to arouse national concern for the crime problem. He urged the chiefs to help him mobilize law-abiding citizens willing and ready to help us regain control of our destiny and bring "community" back into our lives.

As fellow members of the law enforcement community, we know that we cannot operate in a vacuum. The problem of crime is too vast today for us to ignore the millions of good citizens who want to help cut the crime rate. We in law enforcement cannot do this alone; fortunately, today we find citizens asking how they can help.

It is your job, as a police professional, to help plan a strategy that includes the whole community in the battle against crime. We don't need vigilante groups, but we do need vigilant citizens who understand law enforcement, who know our police officers as human beings, who respect us and trust us, who will provide windows of understanding to our communities.

The Two Hundred Clubs, Crusade Against Crime, Backstoppers, Crime Stoppers, Heroes Inc., Victims of Crime Organization, Association for a Better New York, and Riot Relief Fund are all examples of citizens who have banded together to do something about crime. Some of these organizations are supportive of law enforcement, rather than directly resistive to crime. But they let us in law enforcement know that the community is behind us.

Others of these volunteer organizations are learning more about their law enforcement institutions and what they can do to make them more effective and professional. They provide ports of entry for community participation in law enforcement and other government activities.

As Tocqueville observed early in the history of this country, Americans have a passion for joining together in voluntary organizations to achieve public purposes. Our people volunteer because, as Americans, they understand that the glue of our society is the common good and the common good means pulling together. This we do when faced with a common need, emergency, or crisis.

I watched in the early 1970's an alienation of values between generations and the slow but steady efforts of good men and women to heal the wounds and bring community back into our way of dealing with each other. And so, I am even more convinced that the doing of justice, however noble its objective, cannot be achieved in the isolation of law books or in detachment from the mainstreams of community life. A sense of community implies a depth of caring and a willingness to invest heavily of one's self in those things which improve the quality of life in a community.

Are we in danger of letting resignation and complacency become the prevailing reactions to crime? We can prevent this by harnessing the deeply held citizen determination to defend and improve our quality of life, including the safety of our communities. We must foster citizen willingness to support morally and financially whatever it takes to maintain within the community an effective system for the enforcement of its laws.

William H Webster

William H. Webster
*Director*
February 1, 1982

FBI LAW ENFORCEMENT BULLETIN

FEBRUARY 1982, VOLUME 51, NUMBER 2

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**Federal Bureau of Investigation**
**United States Department of Justice**
**Washington, D.C. 20535**

**William H. Webster, Director**

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through December 28, 1983.

Published by the Office of Congressional and Public Affairs,
Roger S. Young
Assistant Director

*Editor*—Thomas J. Deakin
*Assistant Editor*—Kathryn E. Sulewski
*Art Director*—Kevin J. Mulholland
*Writer/Editor*—Karen McCarron
*Production Manager*—Jeffrey L. Summers

ISSN 0014-5688
USPS 383-310

STONE HARBOR
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# Summertime Cops

By
WILLIAM B. DONOHUE
*Chief of Police*
*Stone Harbor, N.J.*

Seashore resort communities share common problems during the summer months. Because of the influx of vacationers and tourists who are attracted to warm, sunny beaches and invigorating surf, these resort communities must augment the size of their police departments to cope with this sudden increase in population.

Cape May County, N.J., is one such seashore resort whose population multiplies tenfold during the summer months. Located on the eastern side of the State, approximately 10 miles south of Atlantic City, Cape May County is often called Philadelphia's "summer playground." Ten of the 13 police departments within the county are in resort communities and employ more than 300 additional police officers during the summer. These seasonal officers more than double the size of the employing department's patrol division and can present monumental problems for the police administrator when considering the scope of their authority and responsibility and the short time available for training.

## Recruitment

Over the past 10 years, the upgrowth of criminal justice programs offered by colleges and universities has minimized the need for active recruitment. Highly motivated students seeking internships or work experience abound. Accustomed to the learning environment, they possess a basic understanding of the American system of criminal justice and rarely, if ever, present disciplinary problems, since such actions taken against them would have negative effects on their future career aspirations. Many, in fact, return after graduation to seek permanent positions.

## Selection

Each year, early in March, letters are sent to previous seasonal officers to determine who is going to return to duty. Once this has been accomplished, the police administrator knows how many new officers will be needed for the coming season. Applications are then reviewed by the chief of police and his executive officers for those best qualified for employment. Applications of criminal justice students reflect their courses of study in law enforcement, and in many cases, the training they may have received in firearms, emergency medical procedures, lifesaving, and water safety. Qualifications such as these often aid in selection.

Candidates receive letters informing them of the times and dates set for the various phases of the selection process (physical testing and interviewing, psychological evaluation, firearms training and qualification, and classroom instruction). Physical testing includes a timed 1-mile run and repetitions of various exercises. Candidates are also required to undergo a physical examination by a licensed physician at their expense, and the results of the examination must be recorded by the physician on the departmental form which accompanies the letter. This is

*Chief Donohue*

intended to discourage the unqualified from participating, and thereby, eliminates the need for rejection.

Candidates who successfully complete the physical testing are then interviewed by a board consisting of four officers representing all ranks within the department. Each board member has equal voting power. During the interviews, hypothetical situations are presented which require discretionary answers. This process has proved invaluable in eliminating those who would make an arrest for every offense observed, regardless of the circumstances and the nature of the offense. The importance of including rank and file members on the interview board cannot be overemphasized. Years of sitting behind a desk can dull an officer's "street sense," and knowledgeable patrol officers contribute greatly in presenting timely and relevant hypothetical situations to the candidates. Their presence on the board also involves them in departmental decisionmaking, which maintains good morale.

The physical testing and interviews take place on a selected Saturday rather than a weekday, so as not to require absence from school.

Written tests designed to determine writing and reading ability and knowledge of law enforcement practices are not administered. Scoring in both the physical testing and interviews is determined mathematically and reduced to decimals to eliminate any ties.

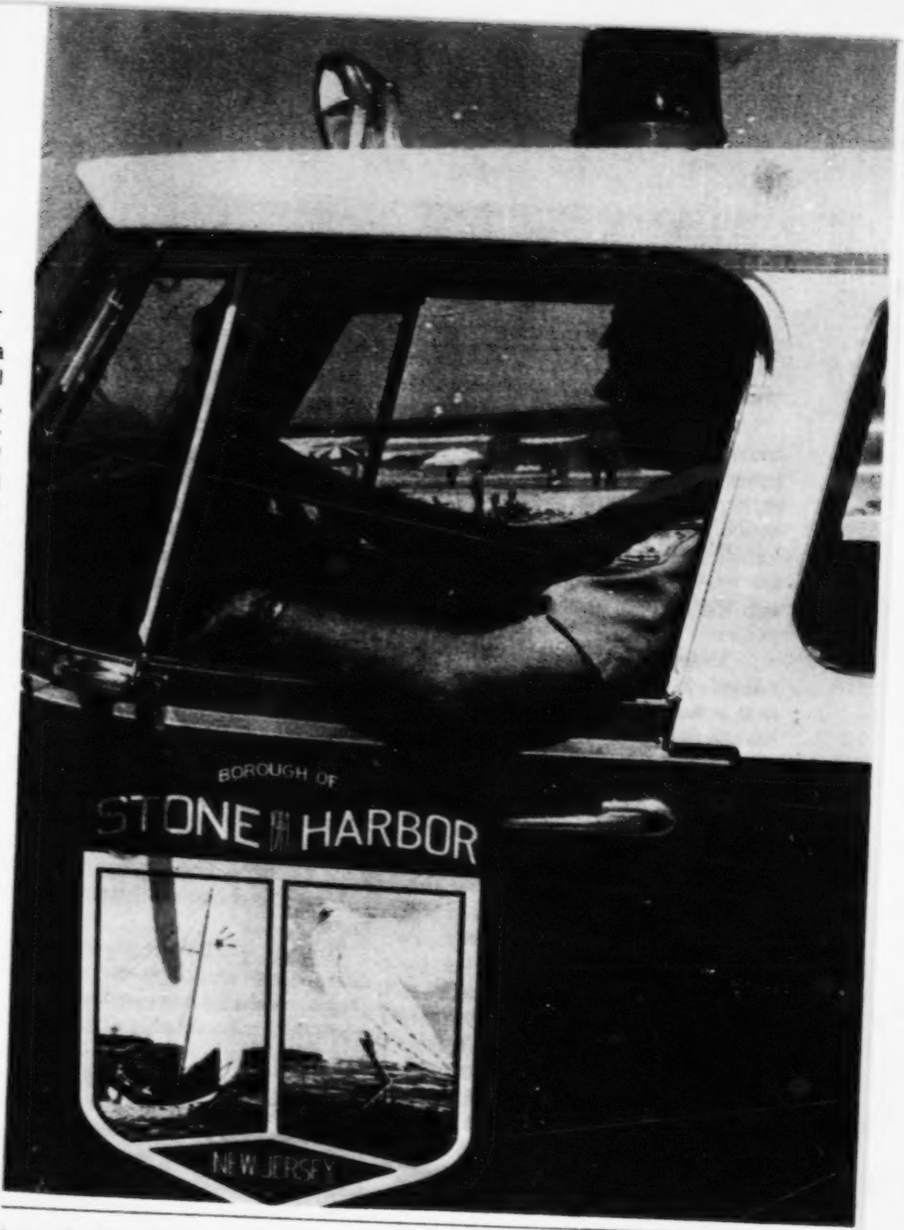
Times attained by candidates in the mile run and the number of repetitions achieved while doing the

*Before being accepted into the program, candidates are required to complete repetitions of various exercises as part of their physical testing.*

*Seasonal officers stand for roll call inspection by the shift commander.*

various exercises are graded on a scale of one to five, as are personal appearance, demeanor, articulation, and other traits observed during interviewing. The results of all phases of selection are carefully documented and preserved in order to refute any claims of unfairness or discrimination that may arise at a later date. All candidates, plus an alternate, are now required to undergo psychological evaluations.

Because of the demand for this service, it is difficult to obtain appointments that are not scheduled several weeks in advance, and it usually takes 2 to 3 weeks before test results are received. Accordingly, appointments can be made well in advance by supplying the examiner with the number of candidates to be tested and providing the names as soon as they are known, which is usually only a matter of days before the actual examination date. This practice allows the police administrator to reject an applicant before he is hired, if test results indicate the individual is not suited for employment. The police executive is placed in an awkward and embarrassing position if he is forced to dismiss a seasonal officer upon the recommendation of the psychologist, if the officer has been working for any length of time. Additionally, the time and monies invested for training purposes are lost. More importantly, however, dismissing the officer at this time and for this reason is extremely unfair to him. Not only must he now carry the burden of having been dismissed from a police department, but he will also find it very difficult, if not impossible, to obtain other employment once the summer season has begun. In all likelihood, he will have to return home, angry and alienated.



In order to reduce cost, psychologists are instructed to administer only those parts of the examination which are intended to measure emotional stability. Career interest, intelligence quotient, mathematical ability, and other tests administered for full-time positions are eliminated. The examiner should be told that the department's only interest is in the candidate's predicted reaction to stress, e.g., whether he can be trusted to carry a firearm.

At this same time, the names of those selected for psychological evaluation are forwarded to the detective division for the purpose of conducting background investigations. This gives investigators time to complete background checks before appointment to the department is made.

### Firearms Training

The next step is firearms training and qualification. This has been placed ahead of the 40-hour classroom training program because experience has shown that it is a waste of time if the trainee, after having undergone the entire training program, fails to qualify with the service revolver and is dismissed.

Contrary to popular belief, it is possible to train an intelligent, physically fit individual to become proficient in the use of a police service revolver in 2 days. Since FBI statistics continue to show that the majority of slain law enforcement officers are killed from a distance of less than 5 feet, the FBI double-action course, with its 7-, 15-, and 25-yard positions, is ideal for seasonal officer qualification.[1] It also provides for a greater number of shooters to participate at one time since the firing line moves in unison, as opposed to the tactical revolver course (the generally accepted qualification course) which requires wide lane separation and consequently fewer participants, due to the individual forward movement of the shooter. The double-action course, administered by well-trained, competent instructors, usually results in all students attaining scores of 90 or above out of a possible 100, well within the prescribed time limits, by the afternoon of the second and final day of firearms training.

Although time is of the essence, sufficient training time must be devoted to safe handling and cleaning of the firearm and the legal, moral, and personal implications of the use of deadly force. Departmental policy concerning the use of warning shots and accountability for discharge must be presented and fully understood by all. A written test, administered to prove and document this knowledge, is mandatory.

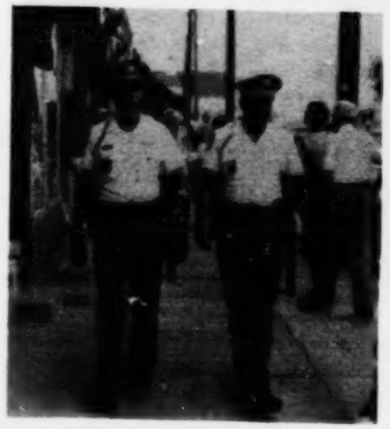
American police officers have traditionally depended on firearms for self-protection. To require an officer, even a seasonal one, to function without a sidearm would be dangerous and unfair to him, his fellow officer, and the citizens he is sworn to protect. Conversely, to arm him without benefit of training would be absurd.

### Training Program

With the limited amount of time available for training purposes (7 days), training subjects, therefore, must be pragmatic and carefully chosen. For instance, it would be a complete waste of valuable training time to instruct the seasonal officer in collecting, preserving, and marking crime scene evidence since it is highly unlikely that he would ever be called upon to perform these tasks.

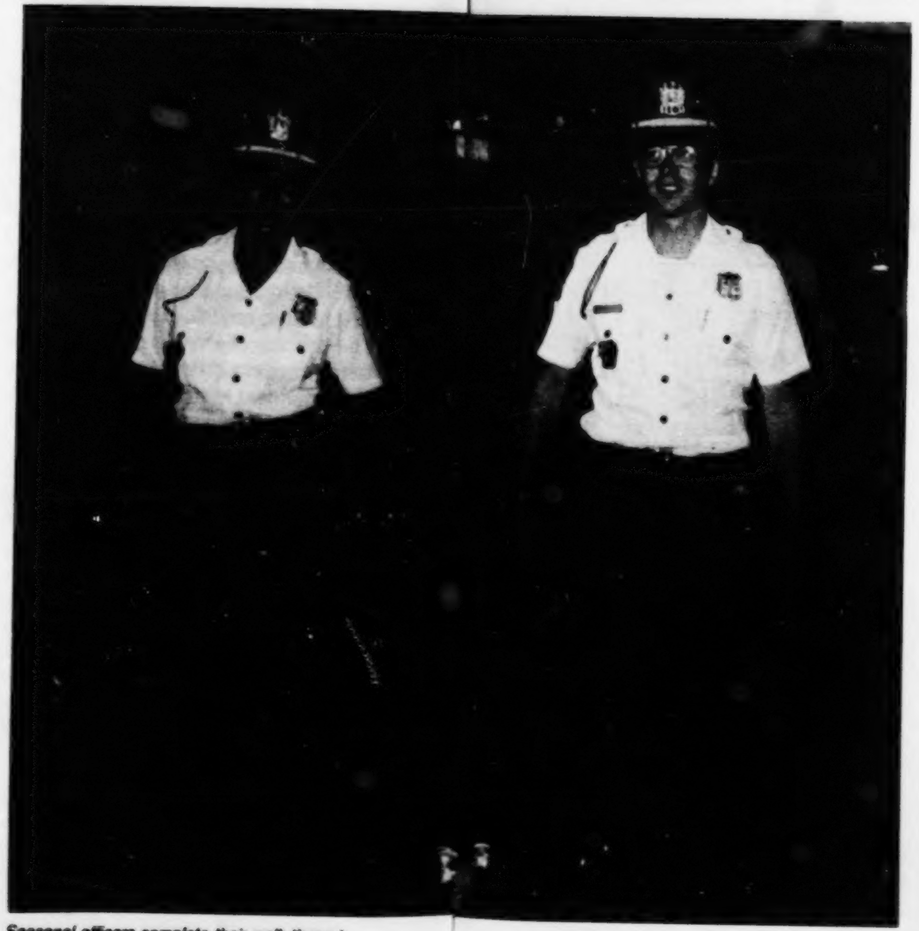
Initially, the trainee should be acquainted with environmental concerns. That is, he should have an understanding of the environment in which he will work, including the community, the type and nature of the local governmental body, and the organizational structure of the police department.

A large part of the program, of course, must be devoted to developing skills. However, the proper application of those skills is equally important and subjects such as human relations, the use of force, and police ethics must also be included in the training.



Foot patrol is one capacity in which seasonal officers are used.

One phase of training is 5 days of classroom instruction.



Seasonal officers complete their walk-through check of a teen recreation area.

Classroom Training Schedule
Seasonal Police Officers
Stone Harbor, N.J., Police

| TIME | MONDAY | TUESDAY | WEDNESDAY | THURSDAY | FRIDAY |
|---|---|---|---|---|---|
| 8:00 am to 8:50 am | Environmental Concerns<br>Table of Organization | Patrol Operations<br>Motor-Foot Traffic Marine | Motor Vehicle Stops—Criminal and Traffic | Handling the Juvenile Offender | Radio Communications Systems |
| 9:00 am to 9:50 am | Policy—Rules & Regs | Investigative Division<br>Investigations, Raids, Crime Prevention | The Drunk Driver | Crimes in Progress | Police Reports |
| 10:10 am to 11:00 am | Human Relations<br>Enforcement Attitudes | The Use of Force | Summons Issuance Traffic & Borough | Evidence Locker Procedure | Police Equipment Familiarization |
| 11:10 am to Noon | Basic Police Practices and Procedures | Prisoner Transportation and Processing | Testifying in Court | Crime Scene Responsibilities | Work—Schedule Recall Procedure<br>Personal Appearance |
|  | LUNCH | LUNCH | LUNCH | LUNCH | LUNCH |
| 1:00 pm to 1:50 pm | N.J. Criminal Law | Prisoner Fingerprinting and Photographing | Responsibilities of Foot Patrol Duty | Controlled Dangerous Substance | City Orientation |
| 2:00 pm to 2:50 pm | N.J. Criminal Law | N.J. Motor Vehicle Law | Emergency Medical Procedures | Arrest Search and Seizure | City Orientation |
| 3:10 pm to 4:00 pm | N.J. Criminal Law | Accident Investigations | Police Ethics | Defensive Tactics<br>Disarming Demonstration | Final Examination |

Seasonal personnel assist full-time officers with routine patrol duties.

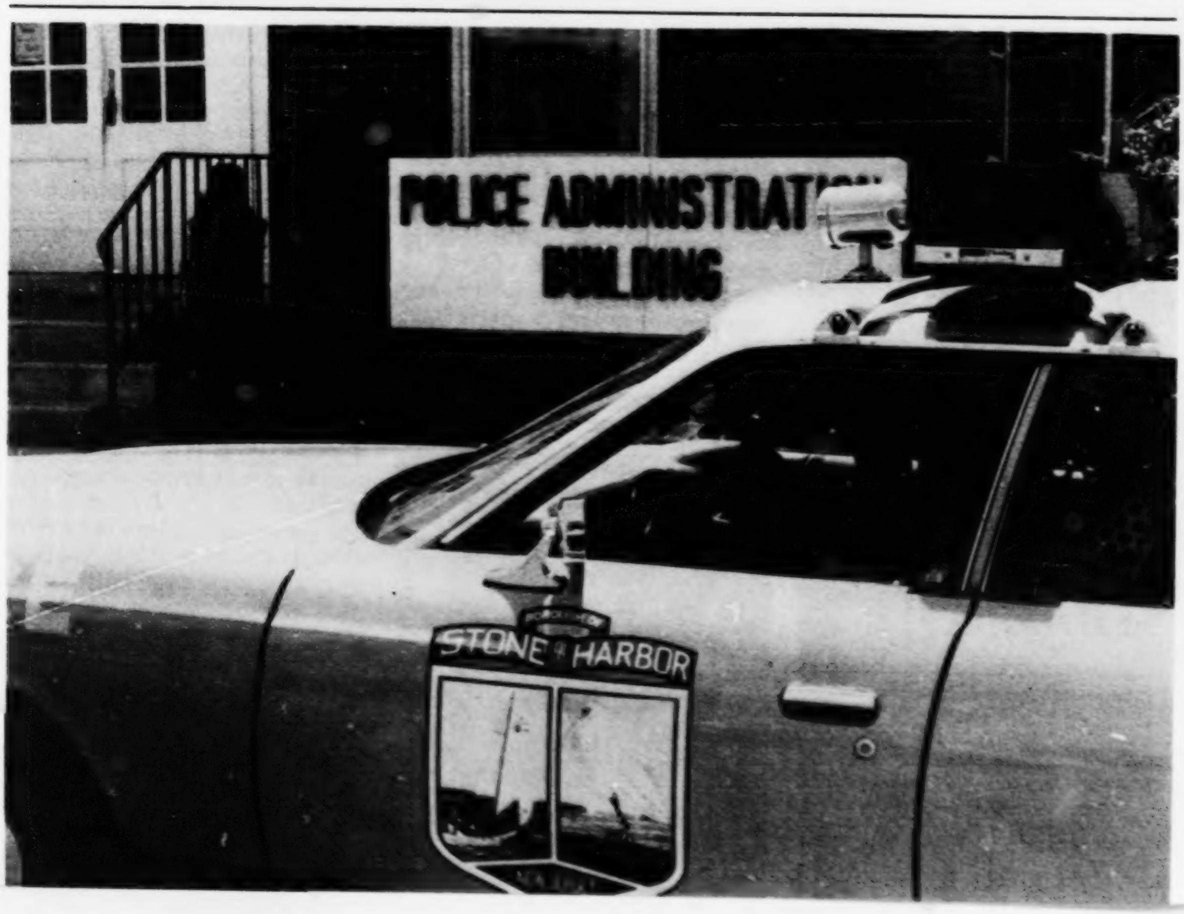
**". . . with proper training and guidance, these young men and women can provide valuable assistance to the police departments and the communities that employ them."**

Written and oral tests end each training day, and a final test which embraces all subjects is administered at the end of the program. Officers returning from past seasons of employment should also be required to participate in all phases of training. Experience has shown that the length of time between employments and the constant changes in the criminal law and its application mandate this practice.

Successful candidates are now sworn in and presented their badges by the chief of police and the appropriate representative of the governing body. Also at this time the new officers are given an "orientation packet" which contains the city directory, copies of the police radio code, frequently used city ordinances and criminal and motor vehicle statutes, departmental policy and rules and regulation manuals, and the various forms required to be filled out for insurance, payroll, and other administrative purposes. Additionally, each officer is given a "check off" list, which he must complete and return within 2 weeks. Certain routine tasks are listed, such as lighting and placing road flares which, because of time restraints, were not addressed during the training program. He is required to have his skill in performing these tasks checked and documented by the full-time officers he will be working with during this period. By allowing nonsupervisory members to grade these items, the supervisor's burden is lightened and some degree of job enrichment and enlargement is provided for the grading officer.

### Legal Issue

Seasonal officers, until recently, were classified as special officers under N.J.S.A. 40A: 14-146, which provides for the appointment of police personnel not to exceed 1 year and removal from office without cause or hearing. They serve under the supervision of the chief of police and are required to conform to rules and regulations, but are not considered to be members of the police force and are not permitted to carry weapons during off-duty hours.[2] The statute provides



*While patrolling the beach front, a seasonal officer encounters a young man with a question.*

little guidance regarding the scope of their duties and is even less relative to their training.

The use of untrained special officers has been greatly abused and this practice became the subject of litigation brought by the members of the police union who were protesting this misuse. The New Jersey Superior Court ruled that only police officers who had been trained under the State's Police Training Commission's guidelines, which require 13 weeks of formalized recruit training, could carry a weapon and effect arrest. This decision shocked and bewildered resort officials. Thirteen weeks of training would be cost prohibitive and totally impracticable, since the time spent in training would now exceed the time employed. Many officials, realizing that their "winter-sized" police departments would be unable to cope with the huge summer populations, demanded that State police be assigned to patrol their communities since a summer season was rapidly approaching. On appeal, this decision was modified in favor of resort communities. The appellate court ruled that the decision did indeed apply to special officers but not seasonal officers, since it held that seasonal officers were "regular officers on temporary appointments." Since only regular officers on permanent appointments are required by law to successfully complete the 13 weeks of recruit training, police academy attendance is not required for seasonal officers. The question of seasonal officer training was left for future litigation since the court believed it was not an issue at this time.[3]

## Conclusion

Seasonal officers can be used for a myriad of duties. During those hours when the workload is the heaviest, they can perform tasks that will allow regular officers to be free to handle more serious matters. They are used mainly to provide two-officer patrol units and to relieve regular officers of foot patrol and routine traffic-related responsibilities. They also assist in routine "booking" procedures, thereby allowing more full-time officers to remain on patrol. However, as with all law enforcement personnel, adequate supervision is the key to success.

Performance evaluations should be conducted monthly, and a final "end-of-the-season" evaluation requiring the evaluator to state why the officer should, or should not, be rehired the following summer is recommended.

Seasonal officers will continue to be used by resort communities to assist their police forces in dealing with the many problems associated with the seasonal increase in population. However, there is, at present, a negative philosophy concerning the use of seasonal officers. Police administrators who consider these officers to be a "necessary evil" must become more positive in their outlooks and recognize that with proper training and guidance, these young men and women can provide valuable assistance to the police departments and the communities that employ them. **FBI**

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**Footnotes**

[1] *Law Enforcement Officers Killed*, Federal Bureau of Investigation (Washington, D.C.: U.S. Government Printing Office, 1981), p. 14.

[2] Seasonal officers are required to leave their weapons in the gun locker at the end of each shift and retrieve them at the beginning of the next tour of duty.

[3] *Belmar Policemen's Benevolent Association v. Borough of Belmar*. Decided by the New Jersey Superior Court Appellate Division, April 22, 1981. Docket number A 4065-79, p. 4.

# The MMPI and The Prediction of Police Job Performance

By
MARCIA C. MILLS, Ph. D.
*Clinical Psychologist*
and
JOHN G. STRATTON, Ph. D.
*Director*
*Psychological Services*
*Los Angeles County Sheriff's Department*
*Los Angeles, Calif.*

The inappropriate use of authority by police and the bizarre behavior of people encountered by them, combined with the stresses, risks, and violence in the job, have led to an increase in the use of psychological tools to aid in police selection. Psychologists and psychiatrists have been employed to participate in this evaluation process with the intent of selecting emotionally suitable individuals capable of handling the various requirements of law enforcement. However, both psychologists and police administrators have a tendency to overlook the crucial issue of validity in their approach to psychological assessment. Much of the research conducted has failed to consider whether the procedures employed are predictive of successful police performance. A major obstacle lies in the unavailability of followup of individuals that are disqualified from entering the system.

The paradoxical nature and requirements of police work must be examined in order to establish the appropriateness of psychological assessment.[1] The demands of policing have multiplied in today's society. Officers often are expected to respond to many situations filled with contradiction and ambiguity. Issuing a traffic ticket, settling family disputes or barroom conflicts, apprehending a robbery or murder suspect, and assisting in riot control are only a few of the myriad of duties today's police officer may be called upon to perform.

The nature of academy training and type of services actually provided are often discrepant. Seventy to 90 percent of police training is devoted to crime control, laws, and police procedures, while frequently 70 to 90 percent of subsequent job duties are devoted to interpersonal communication and interaction.[2]

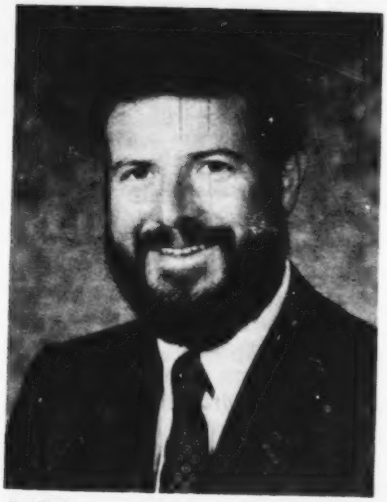
Procedures are often taught in either/or styles of presentation, with one appropriate legal response. The variety of interpersonal skills required in actual situations does not lend easily to this one-way approach. Situations and tasks an officer may be involved in, and hopefully prepared for over the length of his/her career, are almost too divergent to classify in any single or simplistic way.

While a police officer may be expected to perform many professional duties in the service of his community, the time he is currently given to master these skills range from a few short weeks to an upper limit of approximately 6 months. The high school graduate applicant is expected to learn all the laws relative to his enforcement duties, as well as service-oriented duties, in less that half a year. Doctors, lawyers, and other professionals are given as much as 8 years of specialized training. It is expected that police provide a diversity of professional services with little more training than semiskilled workers receive. Limited training time makes it necessary to concentrate on the laws, legal aspects, and procedures of the job, leaving minimal time for developing social and interpersonal skills.

In addition to a paucity of training in interpersonal communication, police officers are rarely rewarded by their employers, the citizen-clients, or the media for interpersonal skills.[3] Crime-related rather than service-related efforts are given greater publicity and recognition.

The quasi-military organization of law enforcement presents a second paradox. Agencies have established a hierarchical profile characterized by uniform and rank. The system is organized rigidly.[4] Yet, officers make decisions and perform with little direct supervisory contact, particularly at the lower ranks. Paradoxically, a consistent finding has been that police seem to prefer direction within structured situations.[5] Thus, one finds a personal conflict for officers who must behave

Ms. Mills



Dr. Stratton

along an assertiveness-dependency continuum.[6] The quasi-military component fosters dependency, while the policing aspect itself requires considerable independent assertiveness.

Opposing factions in the community add a third paradox to the climate in which officers perform law enforcement services. Police find themselves caught between forces pressing for sociological change and those forces bent on a rigid, punitive approach to enforcement. Liberal voices command a nonviolent approach to conflict; conservative forces dictate militant control. The physical power, delegated by the community, is met with emotions ranging from indifference to outright hostility. There is often resentment from the very community that depends on police services. Since policing demands individuals who are capable of coping with these paradoxes and other stresses, the use of appropriate and effective psychological assessments could prove valuable.

Social, legal, and economic issues lend an urgency to improved police selection strategies. Police perform important public services that openly and dramatically affect lives. In addition, law enforcement is considered one of the most stressful occupations in the country.[7] Thus, the authoritarian position and the potential for inappropriate use of power evoke a strong need for improved police screening and selection.

The presence of even a few undesirable officers has enormous consequences, making the identification of valid predictors important to American society. Excessive use of force by an emotionally unstable officer can have tragic results. Severe problems of low job satisfaction, overstress, disability benefits, and early retirement plague both police administrators and the community. In spite of massive expenditures allocated as a result of the Law Enforcement Assistance Act (LEAA), the crime rate remains on the increase and the number of community victims at the hands of the police is on the rise.

Personnel selection procedures have come under critical review for alleged discriminatory employment practices. Guidelines have been set down by the Equal Employment Opportunity Commission (EEOC), calling for the validation of selection procedures.[8] Court decisions during the past decade have mandated equal opportunities for minorities and women, as well as job-related validation. Nevertheless, instruments and procedures are widely used in the psychological selection process without empirical validation.

An officer who terminates employment because of misconduct or stress disability becomes a monetary deficit. The cost of training an officer is approximately $10,000 to $20,000 and disability benefits cost between $250,000 and $500,000 over the officer's lifespan. The unresolved question lies in the procedures that will best eliminate this waste.

The primary criterion for assessing police applicants has deviated little from the process used 150 years ago by the Metropolitan Police of London, England. J. H. Chenoweth described this selection process as follows:

> "Of the first 2,800 men recruited into that organization at least 2,238 (or approximately 80 percent) had to be dismissed from the force. All 2,800 officers had been hand picked by a very careful system of selection. Each candidate had to submit three

*Sheriff Peter J. Pitchess*

written testimonials of character, one of these being from his last employer; the writers of these testimonials were personally interviewed. If the candidate passed through this stage, he reported for a medical examination which in practice meant an inquiry into both his physical qualifications and his general intelligence. Less than one in three of the applicants were successful in passing through this stage. Those who did were then interviewed by an experienced personnel officer who eliminated the candidates obviously not suited for police work and passed the survivors on to the first two Commissioners of the Metropolitan Police, who again interviewed the remaining candidates. The disapproval of either Commissioner was sufficient to reject the candidate."[9]

Current police selection procedures consist of minimum and maximum qualification levels on criteria of age, general health, physical fitness, visual acuity, civil service "aptitude," character, and sometimes, residency.[10] For the most part, there have been attempts but little success in relating these factors to effective job performance.

The most widely used personality instrument in screening and selection has been the Minnesota Multiphasic Personality Inventory (MMPI).[11] This research instrument is easily administered and objectively scored.[12] However, there are also objective, interpretive procedures available.

The MMPI consists of 566 statements covering a variety of self-report items. The examinee responds "true" or "false" or leaves the statement unanswered. The standard MMPI profile consists of 4 validity scales, 10 clinical scales, and 11 experimental scales. Many psychologists and departments continue to use this instrument even though there has not been any clear relationship established between the test and effective policing. They believe that an applicant's responses to over 500 statements can determine if the individual is psychologically suited to be a police officer.

## The Study

This investigation was an effort to demonstrate the validity of the MMPI in predicting successful policing in the Los Angeles County Sheriff's Department (the largest sheriff's department in the world and fifth largest law enforcement agency in the United States). All applicants had previously passed written civil service and oral examinations, background investigations, and physicals. The MMPI was group administered and was a requirement, but not a disqualifier, in the application process.

Two phases were used to demonstrate the validity of the MMPI in predicting police performance. The first phase attempted to identify MMPI scores predictive of success at three levels—academy acceptance, academy graduation, and field employment.

The second and more interesting phase was a longitudinal study to identify personality dimensions measured by the MMPI that might relate to effective police job performance. It studied an identified sample of police officers who had graduated from the academy 5 years prior and were currently working in custody, civil, patrol, and technical services divisions. In addition to

**". . . to date, there has been no systematic correlation of tests or interviews with an individual's subsequent behavior and success or nonsuccess in law enforcement."**

MMPI scores, educational level, marital status at time of application, and academy grade point average were also examined as predictors. Supervisory ratings, absences, internal investigations, and injuries on duty were used as measures to determine successful performance.

To determine supervisory ratings, a questionnaire was developed by both police personnel and psychologists to provide for the multifaceted nature of police roles. It consisted of 11 bipolar performance items relating to concerns about health, energy level, altercations, self-confidence, attention to detail, organization under pressure, decisionmaking, view toward society, supervisor/rules, interpersonal relations, and communication skills with public (talking and listening). These dimensions were categorized into behaviors that were easily observable, required on the job, and not overlapping.

Direct line supervisors (sergeants) were interviewed individually by psychologists trained in administering the questionnaire, in order that the items were clearly understood. These supervisors were requested to respond to each item by selecting one of five behaviorally anchored statements (assigned a weighted value) that best described the subject. Trial evaluation sessions were conducted with supervisors who were not a part of the study to develop uniformity of the interviews.

The critical aspect of data collection constituted obtaining accurate ratings by the supervisory staff. In order to minimize common rating errors due to indifference, prejudice, the halo effect, leniency, and error of central tendency, the following steps were taken:

1) All evaluations remained confidential. The data were retained for statistical analyses and then destroyed.
2) No promotion or transfer decisions were based on the ratings.
3) Individual identity remained unimportant beyond relating test scores to group performance.

This study attempted to resolve systematically whether the MMPI had the capacity to "screen out" the few extreme clinically undesirable candidates and "select in" desirable individuals that were potentially well-suited to police work. The possibility was also explored that certain traits deemed "pathological" by the MMPI may, in fact, be essential for successful police performance.

### Results

A comparison of successful and nonsuccessful groups at all three states (entry, academy, and field) showed no useful differences in MMPI scores. The data from phase 1 reflected that although some comparative groups differed significantly on certain scales, the strength of the relationships was very weak and discounted the validity of the MMPI to differentiate even the highest 10 percent from the lowest 10 percent of scores. The results from phase 2 were even clearer in producing slight significances accompanied by extremely weak associations between the variables. Thus, the use of the MMPI as a prime predictor in either police screening or selection was not upheld by this research.

The results suggest that the agency's prescreening strategies (oral and civil service written tests, background investigations, and two-phase medical examinations), as well as the self-selection process of applicants, have done an exceptionally fine job and produced a generally able and emotionally suitable applicant group. There is little variation between the profiles of the different groups.

The conclusion that the MMPI is not a useful predictor of success in law enforcement cannot be generalized without replication. Law enforcement organizations differ considerably in size, philosophy, and community services, requiring that assessment be specific to the organization.

There were a few significant but weak relationships between MMPI measures and successful policing defined by entrance into academy, graduation from academy, retention in field, and behaviorally anchored supervisory ratings. Applicants produced profiles within the Minnesota norms and presented an emotionally healthy image. As several researchers have already observed,[13] as a group they tend to have slightly higher scores on particular measures. However, there was no evidence to support the MMPI as a predictor of police performance.

### Discussion

The objective of this study was to assess the validity of the MMPI for determining an applicant's success in police work. Scores on the MMPI bore no relationship as to how officers actually performed on the job, and to date, there has been no systematic correlation of tests or interviews with an individual's subsequent behavior and success or nonsuccess in law enforcement. However, psychologists and

**". . . psychologists should be limited to screening out the pathological and leaving the determination of selection to other aspects of the application process."**

agencies continue to reject candidates on the basis of unvalidated strategies whether they be tests, clinical interviews, or both.

Although psychological testing may be important, it is the job of the evaluator to prove that he/she has the knowledge and tools to assess those emotionally suited for police work. Presently, it is doubtful that the psychological profession has the ability to screen or select law enforcement applicants in a valid and reliable manner. Thus, it is the task of psychologists to stay within EEOC guidelines, validate their procedures, and prove that what they purport to do, they actually can accomplish.

The results of this study call for an increased emphasis on the correlation of tests, interview questions, and psychological examinations with an officer's subsequent performance. The evaluator and the tests must be carefully examined to determine whether their use is ultimately detrimental to the individual, society, and law enforcement. The abandonment of psychological testing for law enforcement applicants is not being advocated. Rather, a more scientific approach, greater understanding of the issues involved, and caution by all involved are proposed.

Screening and selection are the two general approaches used to solve the hiring dilemma. Screening is the process of evaluating an applicant's fitness within acceptable psychological limits. If this can be accomplished, screening appears to be the more appropriate procedure, professionally and legally. R. J. Levy has summarized the following drawbacks to a screening approach:

1) The mere absence of unwanted qualities prior to employment does not indicate a continued absence after employment;
2) Psychological tests have not been demonstrated to have predictive value;
3) The definition of emotional suitability for law enforcement remains undetermined; and
4) Some traits which are often deemed pathological may be essential for the stress tolerance needed in effective policing.[14]

In selection, applicants are chosen for their optimal potential on the job. Some psychologists claim to have developed methods to determine specific traits seen as important in police work, such as logical reasoning, decisiveness, organizational compatibility, self-confidence, sensitivity, stress tolerance, nonverbal impact, positive motivation, behavioral flexibility, and/or others.[15] However, with documented inability of psychologists to predict even extreme behavior such as violence, the chances of more refined predictions of behavior seem remote.[16] Psychological instruments as tools to assess nonpathological traits are extremely limited, with clinical interviews faring no better.[17] Unless scientifically validated, the selection approach does not meet acceptable EEOC guidelines and is questioned as an appropriate role for psychologists.

Given the "state of the art" in psychological evaluation of police applicants, psychologists should be limited to screening out the pathological and leaving the determination of selection to other aspects of the application process. The subsequent months of intensive training and observation by the training academy and the continual evaluation during the officers' probationary year provide a more logical opportunity by police personnel to make final judgments about an individual's capacity to handle the job on certain identified dimensions. The screening approach is also seen as advantageous to the successful operation of law enforcement organizations. Progress and more optimal services occur within agencies that are open to new ideas, innovative approaches, and change stimulated by the employment of a diversity of people.

In the current process of screening or selection, psychologists in the same geographic area, using the same test data in conjunction with interviews, reach different decisions on the same applicant. This also happens in other areas of the criminal justice system wherein psychologists, called as expert witnesses in competency and sanity hearings, emerge with conflicting assessments.

Psychology is an inexact science which needs refinement before making decisions about people's futures. With many departments seeking psychological evaluations of applicants, psychologists must develop approaches and methods that are validated, reliable, and legal. Human behavior is complex, and as yet, impossible to predict. In the area of selection, practitioners of psychology must aim to make it more of an exact science by discarding arbitrary tests and subjective interviews that make arbitrary and subjective predictions and decisions about people and human behavior.

Some psychologists appear quick to claim an ability to evaluate police officers, but are hesitant when it comes to assessing themselves or other professionals in critical occupations, whether they be psychiatrists, surgeons, airplane pilots, or in other careers which dramatically affect people's lives. One can only imagine the reaction of psychologists if they had to be psychologically tested and interviewed before graduation or licensure. Many would consider this approach ridiculous. The fact that none of the previously mentioned careers have this type of screening speaks for itself.

A final implication of this study is the overreliance in selection on a personality explanation of behavior. Perhaps this approach is not as important as an exploration of the job environment (societal and organizational) and the effects it has on normal individuals.

Milgram demonstrated that extremely stressful situations can produce inhumane behavior in otherwise normal people.[18] Likewise, R. Zimbardo and his associates found adverse effects on a "normal" sample of college students in a role-play prison study.[19] They reported that one-third of the "guards" became more aggressive and dehumanizing toward "prisoners" than would be expected in a simulated study. Kirkham joined a police force and experienced a radical shift in both his attitudes and behaviors.[20] He observed that becoming part of the system resulted in an increased politically conservative attitude, greater irritability, and a suspicious nature.

M. E. Wolfgang viewed officers as individuals who become socially isolated, alienated, and forced to retreat within themselves, thereby losing identity with a community that seems to resent them.[21] H. Hahn discussed the same isolation, suspicion, and public animosity that appear to result from the police experience.[22] J. G. Stratton examined the changes that can occur in the officers' social and family relationships, and A. Niederhoffer found that the increased cynicism in police directly relates to time on the force.[23]

Supporters of a situational explanation of behavior propose that selection is not the vehicle by which quality policing will be attained. They propose change in society and the law enforcement system itself, as well as continual training and evaluations by police supervisors.

Greater gains might be made by examining situational factors and their interaction with personality traits. Since the organizational structure of an occupation appears to influence behavior, an important direction for further research would be an examination of the existing law enforcement system and the society in which it functions. A study of the structure, attitudes, values, training, and reinforcement patterns in law enforcement could, perhaps, provide for better policing methods and healthier officers. **FBI**

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# Measuring a Police Organization's Effectiveness:

## A Case for Improving Job Satisfaction

By
LT. DON H. ERICSSON
*Detective Bureau*
*Police Department*
*Culver City, Calif.*

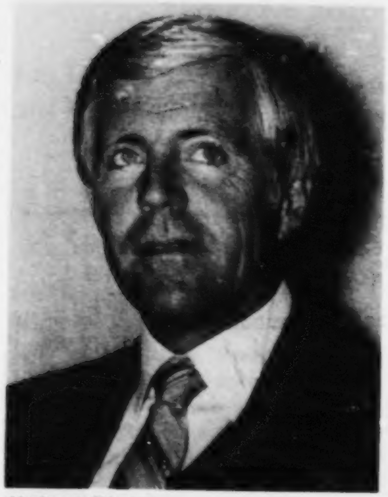
One phenomenon of municipal law enforcement is that many administrators and supervisors are oriented toward crisis management. With present recruiting and retention problems, what is needed in the police profession are managers and supervisors who organize for effectiveness. This requires individuals understanding their role and recognizing what motivates their personnel.

Many police administrators and supervisors are more apt to push numerical objectives rather than define or understand reasons for reaching them. Consequently, they measure "tools," such as field interview cards and citations, and totally miss the point and value of management by objectives.

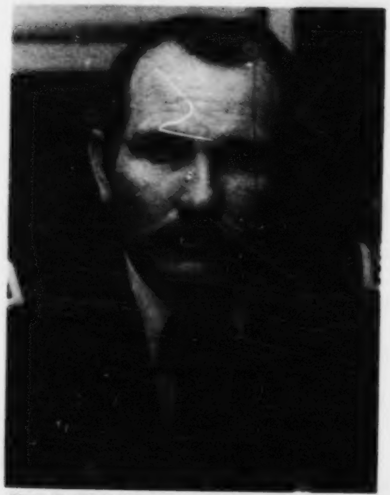
Police professionals do not agree on how to measure the effectiveness of their organizations. However, all of them would agree that whatever measures are used will be influenced in a positive or negative way by the morale of the agency. Morale, in part, has to do with individual job satisfaction, a matter often related to retention.

Many municipal police agencies throughout the United States typically measure productivity and morale of their department based on statistics relating to individual officers, the overall physical appearance of the department and its personnel, or response time to calls for services. These "measurements" do not really measure the overall effectiveness of the police agency. For example, response time in reality is a reflection of the productivity and morale of one division, the patrol division. Individual officer statistics, such as field interrogation cards, citations, and arrests, are also used as indicators of productivity and morale of one division, again the patrol division. The overall image or "appearance" of an agency is usually centered on personnel from one division—those in uniform driving marked police vehicles—the patrol division.

Since late 1978, the management staff of the Culver City Police Department has used three criteria for measuring the effectiveness of its organization—case clearance, morale,



*Lieutenant Ericsson*



*Elwin E. (Ted) Cooke*
*Chief of Police*

and response time. For purposes of this article, response time will not be addressed as it requires separate treatment in specific terms.

**Case Clearance**

One of the most often neglected, but one of the easiest detectible and least obvious measurements of the effectiveness of any municipal organization, is case clearance. In simplest terms, case clearance is the number of reported crimes versus the number of cases cleared by identifying the persons responsible. This measurement is valuable to each municipal police agency because all work is within the guidelines established by the Uniform Crime Reporting Program.

Since June 11, 1930, when Congress approved legislation recommended by the International Association of Chiefs of Police, the FBI has served as the clearinghouse for uniform crime records throughout the United States. The collection of these reports on a nationwide scale is based on the fact that police need to compare certain basic data for local administrative and operational purposes.

The manner in which this information is reported is tantamount to the overall effectiveness of the program nationally. Quality police records are needed and certain minimum standards have been set in the Uniform Crime Reporting Handbook, which details a well-defined policy on case clearance. Those standards are:

"1. A permanent written record of each crime is made immediately upon receipt of the complaint. All reports of thefts and attempted thefts are included, regardless of the value of property involved.
2. Staff or headquarters' control exists over the receipt of calls for service to ensure each is promptly recorded and accurately tabulated.
3. An investigative report is made in each case showing fully the details of the offense as alleged by the complainant and as disclosed by the investigation. An effective followup system is used to see that reports are promptly submitted in all cases.
4. All reports are checked to see that the crime classification conforms to the uniform classification of offenses. That is, offenses reported to the UCR Program, regardless of what the offense is called at the local or state level, should conform to the UCR classification of offenses.
5. The offense reports on crimes cleared by arrest or exceptional means are noted as cleared.
6. Arrest records are complete, special care being taken to show the final disposition of the charge.
7. Records are centralized; records and statistical reports are closely supervised by the administrator; periodic inspections are made to see that the rules and regulations of the local agency relative to records and reports are stricity complied with.
8. Statistical reports conform in all respects to the Uniform Crime Reporting standards and regulations." [1]

Case clearance can and does reflect productivity, contributes to job satisfaction, and impacts the morale of the entire department. It can be used to make comparisons with adjacent ju-

**"Case clearance can and does reflect productivity, contributes to job satisfaction, and impacts the morale of the entire department."**

risdictions to determine agency effectiveness. Unfortunately, many agencies use creative figures to show case clearance and mislead the public they serve. When discovered, these distorted clearance rates have serious negative impact on the quality of life in those communities.

### Problems Involved with Declining Clearance Rates

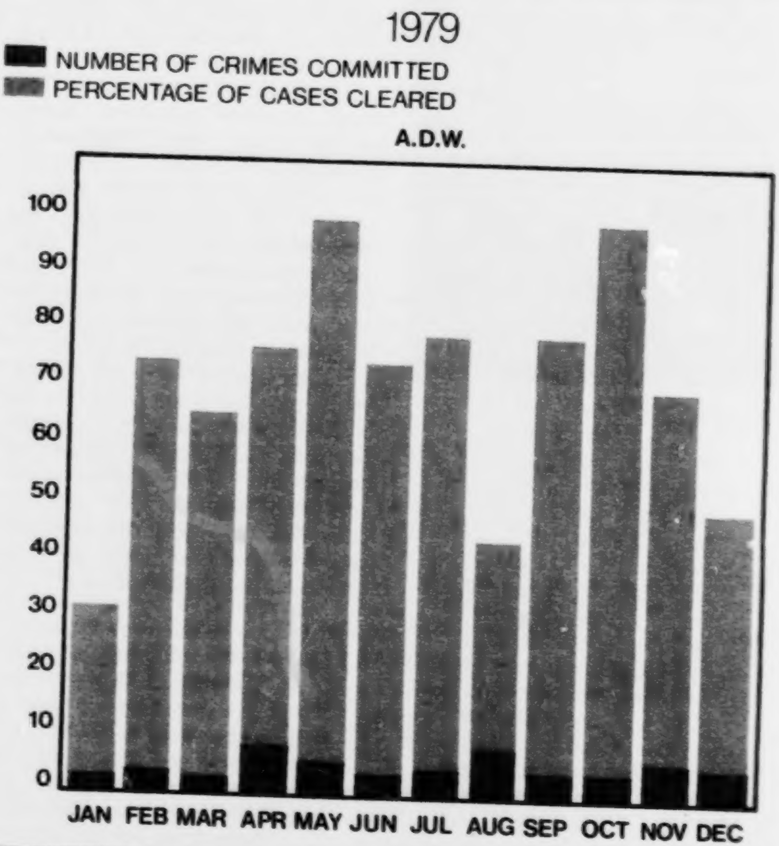
In municipal police agencies, members of the detective division have minimal supervision and tend to display good or bad work habits based on previous experience. It would be an understatement to say that members of the patrol division do not always produce thorough, concise reports, which include interviewing all possible witnesses and obtaining fingerprints or other physical evidence whenever possible. Are patrol personnel "report takers" or "preliminary investigators"? How many personnel know the difference?

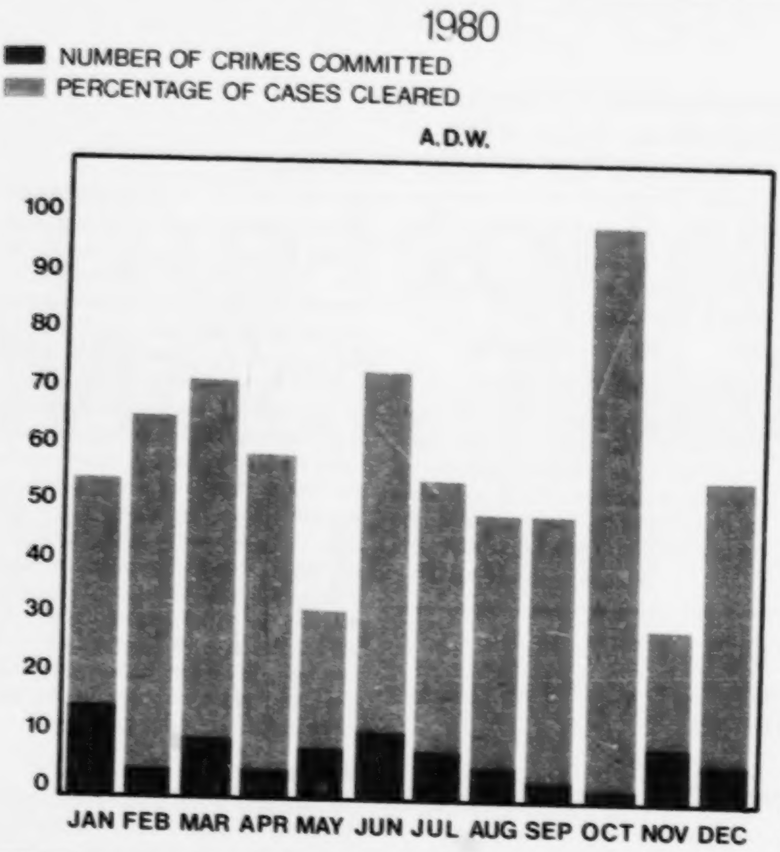
However, the problem is not with detective or patrol personnel, but with the leadership of the organization. In the absence of leadership, each does the best he can, but many cannot work toward an objective without direction. Officers have to know how they fit into all of the department's programs. Initial training programs set forth tasks that lead to performance objectives. But task performance objectives must be reinforced constantly to achieve success. Subordinates must grow to believe in themselves. When encouragement is given to develop accuracy and skills, talent is created.

In general, municipal police supervisors keep track of day-to-day statistics and review these statistics occasionally for crime trends, but few supervisors wage a continuing battle on a month-to-month basis with crime statistics in their jurisdictions. In some instances, the case clearance records of these agencies may be lower than those of adjacent jurisdictions. Unfortunately, this is where some supervisors sit back and do nothing more to fulfill their responsibilities. Again the issue is not with individual officers, for if not properly motivated or directed toward the tasks involved with performance objectives leading to high case clearance records, they miss a great opportunity to achieve basic job satisfaction—an issue which has a direct impact on morale.

### Methods to Improve Case Clearance

Management personnel of the Culver City Police Department became aware of the problems in increasing or maximizing the organization's effectiveness. Since 1978, three criteria—case clearance, response time, and morale—have been used. Through this experience it was discovered that the most critical measurement of the overall effectiveness of the organization,





from a job enrichment perspective, has been that of case clearance. The morale "spinoff" is obvious.

**Control Ledger**

For the past 3 years, the department has been measuring its effectiveness by comparing present case clearance percentages with previous ones. (See fig. 1.) To accomplish this, a control ledger is maintained by the detective division. The control ledger offers accountability of individual officers assigned to cases, shows all reports received by the detective division, and insures that all cases are followed up in a timely fashion.

Before forwarding a report to a specific detail, the detective division supervisor logs in the ledger the daily report (DR) number, the type of crime committed, the investigator assigned, and appropriate information in the miscellaneous information column, such as suspects, descriptions, or license numbers. The reports are then distributed to each assigned detail. Any crimes against persons, such as robbery, assault with a deadly weapon, rape, or grand theft require that the victim be contacted within 3 days. All other crimes, with the exception of those without any leads or suspect information, require a 30-day contact. If there are no leads or suspect information, a form letter is sent to the victim indicating receipt of the report. This letter informs the victim of the detective assigned to the case and the report number. It also directs the victim to the person to contact if there are any inquiries and when to do so. The letter is a good public relations device as it lets the victims know that the police department is aware of the crime and has assigned an investigator to the case. It also alleviates unnecessary phone calls by the victim to the

*Figure 1*

**Six Month Case Clearance Study**

| | CASES REPORTED | | | CASES CLEARED | | |
|---|---|---|---|---|---|---|
| | 1979 | 1980 | 1981 | 1979 | 1980 | 1981 |
| **Repressible Crimes** | | | | | | |
| Burglary | 478 | 459 | 406 | 62 | 49 | 118 |
| Grand Theft Auto | 304 | 301 | 351 | 31 | 60 | 68 |
| Burglary from Motor Vehicle | 215 | 292 | 347 | 21 | 17 | 22 |
| Theft from Motor Vehicle | 164 | 145 | 165 | 7 | 4 | 8 |
| Grand Theft Person | 0 | 30 | 37 | 0 | 3 | 4 |
| **Violent Crimes** | | | | | | |
| Robberies | 156 | 230 | 196 | 33 | 30 | 46 |
| Aggravated Assaults | 29 | 56 | 48 | 22 | 44 | 28 |
| Forcible Rape | 11 | 9 | 5 | 6 | 0 | 3 |
| TOTAL | 1,357 | 1,522 | 1,555 | 182 | 207 | 297 |
| | | | | (13.4%) | (13.8%) | (19.1%) |

**". . . the most critical measurement of the overall effectiveness of the organization, from a job enrichment perspective, has been that of case clearance."**

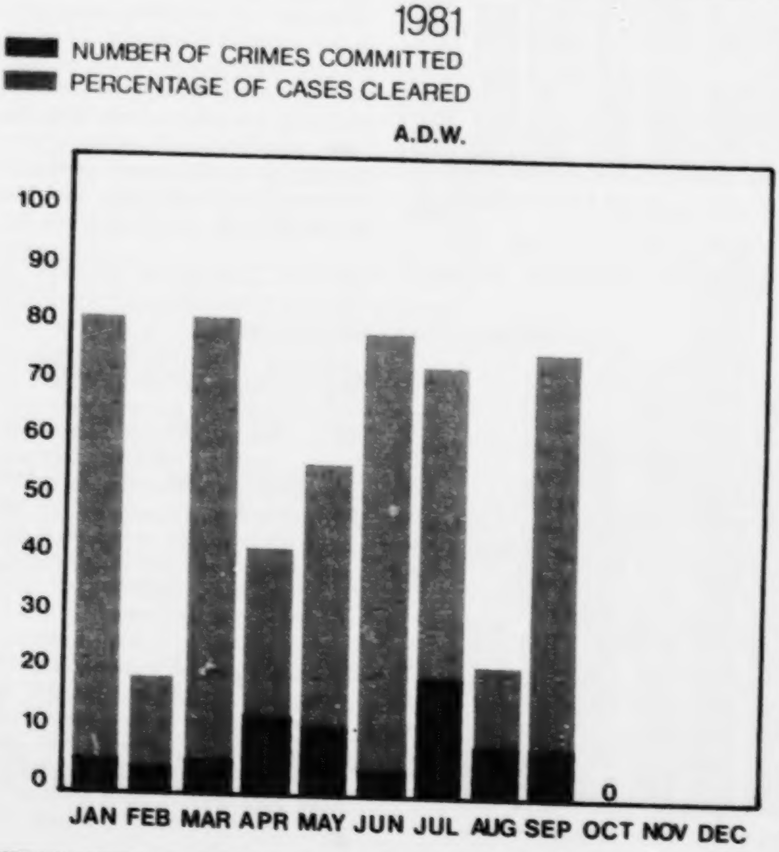
police department to ascertain who is working their case and if any leads have been developed.

A monthly tally is also kept as to the frequency of crimes in each category. At the end of the month, this shows a supervisor how many cases of each crime a section has received. This also helps with monitoring the case assignments of the detectives and will show if they have logged all cases given them in a particular month.

The control ledger is an important instrument for the detective division supervisor. He must be accurate with entries and must make any notations that will assist him in overseeing the proper followup of all crimes committed.

### Case Clearance Chart

Another tool used by the Culver City police is the individual case clearance chart. Each officer assigned to the detective division has a composite chart depicting the case clearance rate by month from January 1, 1979, to the present. These charts, which are maintained by each detective, depict the total number of crimes for each month and the clearance rate for each month. The simplicity and ease of maintaining the chart has a positive value in that each officer identifies with his function. An example of how effective this program has been would be to review the violent crime section in figure 1. For the first 6 months of 1981, the clearance rate for robberies was 23.5 percent; aggravated assaults, 58.3 percent; and forcible rape, 60 percent. There have been no homicides reported, and the overall clearance rate for violent crimes is 30.9 percent, which is approximately 8 and 10 percent higher than the clearance rates of the two cities bordering Culver City.



### Conclusion

The positive effect of emphasizing case clearance to each investigator is that they become more concerned with the tasks involved in initial followup performance objectives. This encourages and fosters more communication between the detective division and the operations division to insure they are working in consonance with each other. This also results in more one-on-one relationships between the two divisions.

By implementing these programs, managers and supervisors of the Culver City Police Department believe they have made all officers more aware of their individual performance, have removed self-doubt, have increased productivity, but more importantly have enhanced job satisfaction at the officer level. **FBI**

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**Footnote**

*Uniform Crime Reporting Handbook*, Federal Bureau of Investigation (Washington, D.C.: U.S. Government Printing Office), pp 2-3.

# The Houston Mock Trial Program

By
Sgt. TIMOTHY OETTMEIER
*Police Department*
*Houston, Tex.*

Police officers perform a myriad of tasks, all of which require the learning of several skills. The public, for example, expects police officers to possess the skill needed to arrest perpetrators. Police officers, however, know that their job is much more intricate than just arresting a criminal. Most officers realize that if they are going to arrest a criminal, they must possess specific skills that will facilitate the arrest in a safe, efficient, and effective manner. These skills include the learning of survival tactics, the acquisition of legal expertise, the ability to collect, organize, and transmit information for an offense report, and above all, the ability to testify successfully in a court of law as to what transpired before, during, and after an arrest.

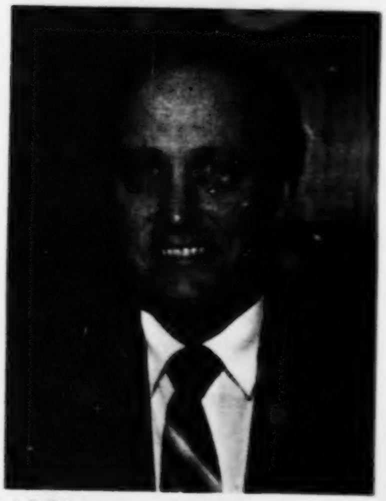
The development of these skills should occur within a department's recruit (cadet) training program. Fortunately, for most police officers, it is in the area of training that law enforcement has made its greatest gain over the last 10 to 20 years.

Gone are the days when police cadets are simply "told" how to perform the numerous facets of their job. Training has evolved to the point where time is now spent not only telling and showing the recruits how to perform various skills but in allowing them the opportunity to perform these skills under controlled conditions.

Serious attempts have been made by numerous departments across the country to bring portions of an officer's job inside the academy for learning purposes. More "hands-on" training programs are being developed for cadets, especially in the areas of officer safety and survival tactics, shoot-don't-shoot exercises, traffic ticket writing exercises, firearms training programs, and in some instances, the development of mock trial programs.

The Houston Police Academy has developed and administered several "hands-on" training programs for cadets. Of all available programs, the mock trial program appears to be one of the most successful and popular with the cadets.

*Sergeant Oettmeier*



*J. P. Bales*
*Chief of Police*

## Purpose of the Program

The Houston mock trial program was instituted within the recruit training program approximately 2 years ago. At that time, efforts were made by members of the training staff to meet with various representatives from the Harris County District Attorney's (D.A.'s) Office to discuss the viability of such a program. The idea was readily accepted without any hesitation or reservation by the D.A.'s office.

After several meetings, it was concluded that the program should be multifaceted, with special emphasis being placed on the following areas:

1) To develop specific courtroom experience by testifying under realistic conditions;

2) To experience the stress of having to testify in a court of law before an active judge, a resourceful prosecutor, and a very determined and sometimes ruthless defense attorney;

3) To magnify errors on offense reports that jeopardize the successful prosecution of a case;

4) To illustrate the importance of preparing oneself prior to being called to testify; and

5) To identify the most common mistakes made by veteran officers that not only contribute to the demise of a successful prosecution but which can cause personal embarrassment for the officer.

## The Program

Logistically, the deployment of the mock trial program called for several important decisions. One of those decisions involved the proper timing of the program within the cadet training curriculum. A large number of mock trial programs are randomly placed within a curriculum—the Houston model immediately follows the crime scene program. The cadets, therefore, must first respond to and resolve several crime-in-progress calls, prepare all the necessary paperwork generated by these calls, and then be expected to testify in any one of the cases some 2 to 3 weeks later. This type of sequencing is vitally important to the recruit for it prepares him in a manner that is consistent with the demands placed on veteran officers. It also facilitates the learning process, as the cadets are able to participate actively in a proce-

*Complete with judge, prosecutor, and defense attorney, the mock trial program allows recruits to gain valuable experience.*

*Under the watchful eye of the judge, the defense attorney challenges the cadet's testimony.*

*Cadets sometimes make mistakes veteran prosecutors have a hard time believing.*

dure that is similar to their expectations about what a police officer's job entails.

Another crucial decision regarding the successful development of the mock trial program involved the recruitment of veteran prosecutors and judges. Due to the large size of the cadet classes, a decision was made to conduct two mock trials simultaneously. It became necessary, therefore, to enlist the assistance of at least four prosecutors and two judges. Each mock trial used one defense attorney (portrayed by a prosecutor), a prosecutor, and a judge to oversee the courtroom activity.

Members of the D.A.'s office were so impressed by the potential success of this program that the initial volunteers were those persons who were responsible for teaching the legal courses within the Houston Police Academy's recruit training program. This established even greater consistency for both the cadets and the prosecutors as both groups sought to share and experience similar learning expectations.

The judges are primarily responsible for overseeing the administration of the program from their bench. All courtroom activities are conducted under the watchful eye of a judge. There is no question who controls the tempo of the case being heard. Not only are the cadets able to testify under realistic conditions, but they do so under the intense scrutiny of a trial judge who routinely sustains or overrules objections that are vital to a fair judicial process. Cadets who look to the judge for help when the defense attorney embarrasses them are usually disappointed. Furthermore, much to the cadets' dismay, the judge all too often will appear to let the defense attorney badger them. Given time, they rapidly discover that their discomfort can be attributed to their inexperience.

Testifying is obviously the most exciting aspect of the mock trial program for the cadets. What they sometimes fail to recognize is that a successful prosecution depends upon preparatory efforts. To aid the cadets with this aspect of the program, the training staff critiques their offense reports at least a week before the start of the trial. A copy of the critiqued report is given back to the cadet, while another copy is sent to the prosecutors participating in the mock trial program.

The cadets, consequently, have ample time to analyze their mistakes and seek out answers to any additional questions they may have. They are also expected to check with their partner (from the crime scene program) regarding the uniformity of their upcoming testimony and their offense report.

**"It is through this type of program that the cadets learn to conduct themselves in a professional manner in a court of law."**

The prosecutors also review the offense reports prior to the start of the program. Their purpose for doing so is threefold:

1) To gage the progress of the cadet's report writing capabilities compared to reports completed by veteran officers;
2) To analyze the reports in terms of inconsistencies, such as the listing of inaccurate times, names, addresses, etc.; and
3) To evaluate the content of the narrative portion of the report in terms of completeness and accuracy. A final decision is then made as to which cadet(s) will be testifying during the course of the trials.

During the administration of the program, several cadets are called to testify about their own particular case. The length of questioning by the defense and prosecution is dependent upon the success of the recruit's responses. Cadets who have a tendency to make mistakes are subjected to lengthier questioning. While this may cause a great deal of embarrassment for the cadet(s), it serves as a learning catalyst for the observers. Once the questioning of a particular cadet has concluded, another cadet is called to the stand.

Since only one cadet can testify at a time, the remaining recruits play the roles of jurors and spectators. As jurors, the cadets find themselves drawn into the program by the prosecutors as they actively seek to manipulate their attitudes. As spectators, the cadets are somewhat more relaxed. This allows them the opportunity to analyze the motives of the defense and prosecution. It also allows them the luxury of witnessing their fellow classmates make humorous, yet damaging, blunders without having to experience any personal remorse or regret for having made such critical mistakes. Laugh as they may, before the night is over, the cadets may find themselves sitting on the stand, making an equally devastating mistake.

Just prior to the conclusion of the evening's activities, the judge and prosecutors hold an informative, impromptu session with the cadets. The prosecutors discuss the merits of the cadets' testimony by emphasizing the importance of being consistent and accurate. The judges discuss the importance of courtroom demeanor. Even though the cadets are exposed to the rules of etiquette in the classroom, applying those rules under the bombardment of the relentless questioning by an adamant defense attorney proves to be extremely difficult. The judges help ease the burden by sharing their experiences and offering suggestions for controlling oneself during these circumstances. The interaction between the cadets, the judge, and the prosecutors represents yet another learning experience, further enhancing the overall value of a mock trial program.

Discussions between the training staff and the prosecutors yield additional benefits for the cadets. First, the cadets are given a rare opportunity to interact openly with a district court trial judge. Second, the cadets discover how easy it is to be inconsistent in their testimony, oftentimes leaving out vital elements of the crime from their report in addition to contradicting their partner's testimony. Third, the cadets are given a real taste of the psychological warfare that occurs in a court of law.

## Conclusion

It is through this type of program that the cadets learn to conduct themselves in a professional manner in a court of law. Once in the courtroom, the cadets realize that they will come into contact with members of the community, as well as with other professionals. It becomes readily apparent to them that they must be firm, accurate, patient, and courteous throughout the duration of their testimony. This will assist them in projecting a professional image before the members of the community. Failure to do so may not only jeopardize the successful prosecution of their case but could also lead to personal as well as departmental embarrassment. Police departments, therefore, should consider adopting and deploying a mock trial program within their cadet training program in order to avoid these adverse consequences.

The cadets, the training staff, and the D.A.'s office believe the Houston mock trial program has been a success. Efforts are now underway to enlarge the program in order to accommodate even more cadets. Given the cadets' willingness to learn and the continued cooperation from the D.A.'s office, the Houston program will continue to prosper.

# ENTRAPMENT, DUE PROCESS, AND THE U.S. CONSTITUTION

By
JOHN M. CALLAHAN, Jr.
*Special Agent*
*FBI Academy*
*Legal Counsel Division*
*Federal Bureau of Investigation*
*Quantico, Va.*

*Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.*

**Origin of Defense**

The first U.S. Supreme Court case which examined the defense of entrapment with close scrutiny was *Sorrells* v. *United States,*[1] decided in 1932. In *Sorrells,* an undercover prohibition agent visited Sorrells' home and made several requests that Sorrells obtain whiskey for him. Finally, after conversation disclosed that both men had been members of the same division in World War I, Sorrells acquiesced and sold a half-gallon of whiskey to the agent for $5. Sorrells was indicted for possession and sale of illegal whiskey, a violation of the Federal prohibition law. At trial, he relied upon the entrapment defense; however, the judge refused to submit the entrapment issue to the jury and ruled as a matter of law that entrapment was not present. The jury returned a guilty verdict and the Federal appellate court affirmed. The Supreme Court granted review limited to the issue of whether the evidence was sufficient to require the trial judge to submit the entrapment question to the jury.

Justice Hughes, writing for the majority, answered this question in the affirmative, and in so doing, recognized the viability of a defense grounded in the entrapment concept. It was his view that the entrapment defense had its roots in a principle of statutory construction. He concluded that Congress, in enacting the National Prohibition Act, could not have intended that a person be found guilty of violating the statute if his conduct was instigated by the Government and if he was not predisposed to commit the crime. Justice Hughes observed:

> "We are unable to conclude that it was the intention of the Congress in enacting this statute that its processes of detection and enforcement should be abused by the instigation by government officials of an act on the part of persons otherwise innocent in order to lure them to its commission and to punish them."[2]

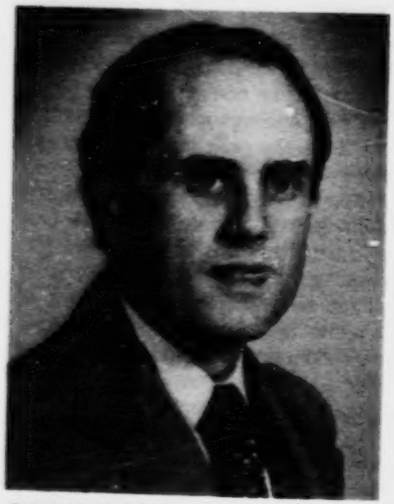
The majority held that the scope of the entrapment defense includes the right of the defendant to offer evidence that he committed the crime at the instigation of the Government. It made equally clear that when the defense is raised, the Government is permitted to prove that the defendant is not otherwise innocent, but rather predisposed to commit the crime. The majority concluded that the issue of entrapment, including the question of whether the defendant already possessed the state of mind to commit the offense, is in most cases a question for the jury to decide.[3]

Thus, the so-called "subjective view" of the entrapment defense was born. It was labeled as such because of the *Sorrells'* majority view that the critical factor in the entrapment equation is the state of mind of the defendant and whether he was predisposed to commit the offense charged.

Justice Roberts wrote a concurring opinion in *Sorrells,* which is the origin of what has come to be known as the "objective view" of the defense of entrapment. Justice Roberts criticized the majority's statutory construction approach as amounting to judicial amendment of the National Prohibition Act. It was his view that the entrapment defense should focus upon the conduct of the police, and specifically, whether that conduct instigated the defendant to commit the crime. Justice Roberts believed that this defense has its roots in the idea that the court has a right to protect itself from becoming a vehicle through which a citizen is prosecuted after committing a crime at the instigation of the Government.[4]

Consistent with Justice Roberts' view that the focus of the entrapment defense should be on the conduct of the police was his criticism of the majority's emphasis on the state of mind

**". . . the scope of the entrapment defense includes the right of the defendant to offer evidence that he committed the crime at the instigation of the Government."**



*Special Agent Callahan*

of the defendant. Justice Roberts observed:

> "To say that such conduct by an official of government is condoned and rendered innocuous by the fact that the defendant had a bad reputation or had previously transgressed is wholly to disregard the reason for refusing the processes of the court to consummate an abhorrent transaction."[5]

He also criticized the majority view that the entrapment issue in most cases should be decided by the jury. It was his belief that the issue was for the court and not the jury to decide. Finally, Justice Roberts believed that the conviction should be reversed and the indictment quashed rather than allow the Government to retry the defendant as the majority opinion would have done.

## The *Sherman* Case

Twenty-six years later, the Supreme Court was once again faced with deciding a case in which the issue of entrapment was a predominant factor. In *Sherman* v. *United States*,[6] a Government informer, initially working on his own, met Sherman in a doctor's office where both were being treated for narcotics addiction. The defendant turned down repeated requests from the informer to provide narcotics for him. Only after the informer appealed to the defendant's sympathy, based upon his knowledge of narcotics addiction withdrawal, did the defendant acquiesce. After several unmonitored sales took place, the informer alerted Federal narcotics agents who observed the three sales for which Sherman was indicted. Sherman raised the entrapment defense at trial. The issue of entrapment went to the jury and a conviction ensued. A Federal court of appeals affirmed. Sherman appealed to the Supreme Court, arguing that entrapment had been established as a matter of law and the trial court erred in allowing the jury to consider the issue.

Chief Justice Warren wrote the majority opinion which reversed the conviction. The majority held that the evidence of predisposition was so deficient that entrapment should have been determined to exist by the trial judge as a matter of law. In so holding, the majority placed no weight at all on two previous narcotics-related convictions of the defendant within the previous 9 years.

The majority affirmed the statutory construction approach to the origin of the entrapment defense which first appeared in the *Sorrells'* majority opinion. Moreover, it broadened that approach by making it applicable to all Federal criminal statutes, not just the prohibition law. The majority reemphasized that the focus should be on the defendant's state of mind, that is, whether he was predisposed to break the law, and criticized the so-called objective view of the defense as being unduly restrictive upon the prosecution.[7]

Justice Frankfurter, while concurring with the majority in the reversal of Sherman's conviction, disagreed with its reasoning. He adopted the objective view of entrapment and rejected the idea that the defendant's state of mind should have any bearing on the issue. He suggested that the entire focus of the Court should be upon the nature of the police conduct in the case and whether it falls below acceptable standards.

Justice Frankfurter attempted to further refine the objective view by expanding it from a test that focuses solely on police conduct. He suggested that it include a "hypothetical innocent man" test, i.e., whether police conduct in a particular case would have successfully tempted a person not involved in criminal activity.[8]

The importance of *Sorrells* and *Sherman* lies not in the result but rather in the emergence of the subjective view of entrapment over the objective approach. Notwithstanding this fact, three Federal appellate courts applied the objective view of the defense to cases presented to them in the early 1970's.

In *United States* v. *McGrath*,[9] U.S. Secret Service agents infiltrated an already existing counterfeiting ring and took substantial control over it. In *Greene* v. *United States*,[10] an undercover agent for the Bureau of Alcohol, Tobacco and Firearms contacted persons recently convicted of manufacturing and selling illegal whiskey, and over a protracted period, urged them to resume their operation, supplied them with resources, and offered to supply them with additional equipment. And in *United States* v. *Bueno*,[11] the uncontradicted testimony of the defendant was that the Government, through an informant, provided him with heroin that he was ultimately charged with selling to a Government agent. In all three cases, the courts reversed the convictions and held as a matter of law that the defendants were entrapped, notwithstanding substantial evidence of predisposition. In view of the rejection of the subjective view of entrapment by three appellate courts, the time was ripe in 1972 for the Supreme Court to reconsider the entrapment question.

## The *Russell* Decision—Due Process Emerges

In *United States* v. *Russell*,[12] an undercover agent was instructed to infiltrate an ongoing operation suspected of producing methamphetamine. The agent offered Russell a scarce but lawful chemical ingredient essential to the production of the drug. Russell accepted the offer and the agent provided Phenyl-two-Propanone. Russell was eventually indicted for manufacturing and selling the drug. At trial, his sole defense was entrapment. The evidence disclosed a substantial predisposition on Russell's part to produce and sell methamphetamine. The jury rejected the entrapment claim and returned a guilty verdict. The Ninth Circuit Court of Appeals reversed, holding that:

> "Regardless of the significance of predisposition . . . there is merit in Russell's contention that a defense to a criminal charge may be founded upon an intolerable degree of governmental participation in the criminal enterprise."[13]

The court adopted the objective view of entrapment and also suggested, without specifically so holding, that the objective view was premised on due process of law.[14] The United States appealed, and the Supreme Court reversed.[15]

In urging that the appellate court decision be affirmed, Russell argued two alternative theories. First, he suggested that the Court adopt the objective view of entrapment, which might allow him to prevail, notwithstanding his concession in the appellate court that he may have been predisposed.

Justice Rehnquist, writing for the majority, declined Russell's invitation, and once again affirmed the subjective view as the predominant view of the defense. He also made it clear that entrapment is a defense that is not constitutional in origin. He observed:

> "Since the defense is not of a constitutional dimension, Congress may address itself to the question and adopt any substantive definition of the defense that it may find desirable."[16]

Justice Rehnquist took the opportunity to criticize the objective view by suggesting that if the Government could not offer evidence of predisposition after the defendant had raised the issue of entrapment, it would be difficult for the Government to secure convictions in cases where the crimes are normally carried out in secret. In addition, he pointed out that application of the objective view is tantamount to a judicial grant of immunity to a clearly guilty defendant because of police actions which might have induced not the predisposed defendant, but some hypothetical innocent person to commit the offense.

Finally, he faulted the objective test as one enabling the judiciary to exercise "a chancellor's foot" veto over law enforcement practices of which it does not approve. Under the objective view, the judiciary can impose its own subjective belief of right and wrong to reject police activity which it finds offensive.[17]

**". . . where the conduct of Government agents is challenged, there exists the possibility of a separate, constitutionally based defense lodged in principles of due process."**

Russell also argued that the entrapment defense should rest on constitutional grounds. He claimed that Government involvement in his case was so great that any prosecution emanating from such conduct violated fundamental principles of due process. Justice Rehnquist, in rejecting this contention, recognized the difficulty that police encounter in attempting to detect drug-related crimes. He approved of police infiltration of drug rings and specifically sanctioned police participation, which includes providing some item of value to the conspirators to gain their confidence.

Justice Rehnquist refused to rule out the possibility of a constitutionally based due process defense based upon a different set of facts. The following language from the majority opinion could be viewed as the genesis of a separate defense:

> "While we may some day be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction . . . the instant case is distinctly not of that breed."[18]

The importance of *Russell* is twofold. It solidified the preeminence of the subjective view of entrapment, and it gave birth to the notion that where the conduct of Government agents is challenged, there exists the possibility of a separate, constitutionally based defense lodged in principles of due process.

### Hampton—Due Process Solidified

The most recent Supreme Court case dealing with the entrapment issue and the separate constitutional due process issue was *Hampton* v. *United States*.[19] *Hampton* involved a disputed fact situation which included claims by the defendant that a Government informant suggested to him that he (the informant) had a friend who could produce a nonnarcotic, heroin-like substance which could be sold to gullible persons. Following Hampton's arrest for participation in a distribution scheme, he was tried on two Federal charges of selling heroin. At trial, Hampton testified that the two sales leading to the charges against him were solicited by him. The trial judge rejected Hampton's proposed jury instruction which would have enabled the jury to find entrapment, regardless of predisposition, if it found that the heroin sold by the defendant to Federal agents was supplied to him by the informant. Hampton was found guilty by the jury, which suggests by implication that the jury disbelieved his claim that he did not know what he sold was heroin. Both a Federal appellate court and a divided Supreme Court affirmed.

The judgment of the Supreme Court was announced by Justice Rehnquist in an opinion in which two Justices joined. For the sake of analysis, Justice Rehnquist adopted Hampton's view of the facts of the case, that is, he appeared to accept as correct Hampton's claim that a Government informant provided the substance which resulted in the charges being brought against him.

Hampton, because of his clear predisposition to commit the crime, recognized that past Supreme Court cases effectively barred him from arguing entrapment. Therefore, his argument before the Court was based upon a separate constitutional defense grounded in due process. Justice Rehnquist, in rejecting this constitutional argument, retreated from his statement in *Russell* that due process might be a viable defense in a future case. It was his view in *Hampton* that if police act improperly in concert with an equally culpable defendant, the remedy should not be to free the predisposed defendant, but rather to prosecute the police. Justice Rehnquist also made it clear that the subjective view of entrapment is the correct one to be used in the Federal courts.

Justice Powell, in a concurring opinion in which one other Justice joined, agreed with Justice Rehnquist that Hampton's predisposition effectively precluded him from claiming entrapment.[20] Thus, five Justices in *Hampton* accepted the subjective view of entrapment.

Justice Powell was not willing to agree with Justice Rehnquist that predisposition of a defendant would bar him from making a constitutional due process claim. However, he believed that the conduct of the Government did not amount to a due process violation in *Hampton* any more than the Government conduct in *Russell*. He was not willing to rule out the successful application of a due process defense in circumstances that would merit its application even when the defendant was predisposed to commit the crime.[21]

Justice Brennan wrote a dissenting opinion in which he was joined by two Justices. Justice Brennan agreed with Justice Powell that a separate defense on due process grounds should be available to even a predisposed defendant when Government conduct reaches beyond acceptable levels.[22]

The *Hampton* decision is important for several reasons. It represents the fourth Supreme Court case in which a majority of the Justices adopted the subjective view of the defense. *Hampton* could be said to stand for the last rites, if not the death, of the objective view of entrapment in the Federal courts. Secondly, *Hampton* is a case in which five Justices affirmed a conviction after accepting the defendant's view of the facts, which included a claim that the Government provided him with the substance for which he stood convicted. Finally, five Justices agreed as to the viability of a separate constitutional defense based upon due process principles in cases where Government conduct is deemed outrageous, regardless of predisposition. Hence, out of the ashes of the objective view arose a strikingly similar but separate defense with a constitutional dimension added to it. Therefore, it is important to examine the parameters of this new defense, its similarities to the objective view of entrapment, and its differences.

## Due Process and the Lower Courts

Since *Hampton*, the Supreme Court has not decided any case involving this new defense. The only Federal appellate decision since *Hampton* in which the defense has been successful is *United States* v. *Twigg*.[23] In *Twigg*, one Kubica, as part of a plea bargain, agreed to assist Federal drug enforcement agents in detecting narcotics violators. He told the agents that 3 years previously, he operated a methamphetamine laboratory with a person named Neville. Kubica was told to recontact Neville to determine if he was interested in resuming operations. Neville responded to that contact in a positive manner. Kubica undertook responsibility for setting up the laboratory, and the Government provided considerable assistance. They supplied him with the same scarce chemical that the agents supplied to the defendant in *Russell*. Kubica received from the agents 20 percent of the glassware needed for manufacture, and when difficulty ensued in finding a suitable location for production, the agents rented a farmhouse where the lab could be set up. The agents told Kubica where he could purchase the rest of the needed chemicals. The entire manufacturing process was controlled by Kubica. Neville had little, if any, involvement in it. While leaving the farmhouse with a suitcase containing contraband, Neville was arrested and later tried for a Federal narcotics violation. The Government's case included uncontradicted evidence of predisposition on the part of Neville. The jury found him guilty, and by implication, predisposed to commit the offense. On appeal, he argued that the Government involvement was so overreaching that the prosecution should be barred on due process grounds as a matter of law. In a split decision, a three-judge appellate court agreed and reversed the conviction. In doing so, the court balanced the defendant's predisposition and the great difficulty facing law enforcement in detecting drug-related offenses on one side of the ledger against the conduct of the Federal drug agents on the other. The court noted that the defendant was not known to be involved in illegal activity when Kubica made the initial contact with him. In finding that the conduct of the Government violated the Constitution, the court stated:

> "They set him up, encouraged him, provided the essential supplies and technical expertise. . . . This egregious conduct . . . generated new crimes. . . . Fundamental fairness does not permit us to countenance such actions by law enforcement officials and prosecution for a crime so fomented by them will be barred."[24]

## Due Process v. Objective View

There are marked similarities between the objective view of entrapment and the constitutional due process defense. Both defenses focus primarily upon the conduct of the Government in terms of whether it falls below acceptable standards. Both defenses are available to the defendant, regardless of predisposition.[25] And both defenses present an issue which is to be decided by the court as a matter of law rather than by the jury as a question of fact.[26] These similarities might suggest that the due process defense is nothing more than the objective view of entrapment reincarnated. Judge Adams, dissenting in *Twigg*, took the position that regardless of these similarities, the Supreme Court considered the defenses different. It was his belief that the due process defense which emerged from *Hampton*

**". . . it is important for law enforcement officers from all jurisdictions to recognize the existence of a separate, constitutionally based defense which may be available to a defendant regardless of predisposition."**

should be applied only to truly outrageous cases. He stated:

> "For once the Supreme Court has decided to eschew close scrutiny of law enforcement techniques under the objective approach to entrapment, it would seem inconsistent for it to announce a new doctrine allowing just such a review. Had a majority of the Court intended that due process review of government involvement in crime should constitute anything more than a seldom used judicial weapon reserved for the most unusual cases, it would have been more forthright for it to have adopted the position . . . urged by the minority voices in *Sorrells, Russell* and *Hampton*. ..."[27]

Justice Powell, in his concurring opinion in *Hampton*, pointed out the unique nature of the due process defense. It was his view that this defense should be reserved for the rare case wherein police conduct was particularly offensive.[28] He cited *Rochin* v. *California*[29] as an example of such a case. It should be noted that *Rochin* involved a particularly flagrant exercise of police power. Several Federal appellate decisions have articulated the view that the due process defense should be applied only when police conduct is particularly flagrant.[30] It is also true that in *Hampton*, a majority of Justices found nothing constitutionally objectionable in highly questionable police conduct. Since most police conduct in due process cases probably will not be as offensive as that in *Hampton*, the likelihood that the defense will prevail is remote.[31]

The most salient factor supporting the view that the constitutional due process defense was intended by the Supreme Court to be reserved for the exceptional case involving flagrant abuse of fundamental fairness by the Government is the fact that although this defense has been raised in many Federal appellate cases after *Hampton*, only in *Twigg* has it been successful.[32]

Another distinguishing factor which sets the due process defense apart from the objective view of entrapment is the manner in which the predisposition of the defendant is considered. Under the objective approach, predisposition to commit the crime is irrelevant. The total focus of the court is upon the conduct of the police. The manner in which the due process defense has evolved in the post-*Hampton* Federal appellate cases suggests that predisposition, far from being irrelevant, is considered by the courts in a balancing process. The predisposition of the defendant, along with other factors, are weighed against the flagrant and intrusive nature of the police conduct.[33] Thus, predisposition does not preclude the defendant from making a constitutional argument and is far more important in the due process equation than it was in the objective approach to entrapment.

The Federal courts, in deciding whether the due process defense will prevail, consider many factors. Among them are the following:

1) The degree of difficulty that the Government has in detecting certain types of crime, such as narcotics and bribery offenses;[34]
2) The level of predisposition of the particular defendant;[35]
3) Whether the Government created an essentially new crime[36] or infiltrated an already existing enterprise;[37]
4) Whether the Government took command of the operation or merely followed the orders of the conspirators;[38]
5) The level and degree of Government participation in the crime in terms of providing resources to enable the defendants to commit the offense, i.e., equipment, technical expertise, contraband, manpower, etc.;[39]
6) Whether the Government, through undercover agents or informants, has made threats to the defendants to induce commission of the crime;[40]
7) Whether undercover agents abused the judicial process by furnishing, for example, untruthful testimony to a grand jury;[41] and
8) Whether the Government offered significant enticements to induce the defendants to commit the crime.[42]

While the foregoing list is not exhaustive, it does represent the kinds of factors which the courts have considered in making the difficult due process determination.

## Conclusion

In the Federal courts, the law regarding the defense of entrapment is clear. The subjective view of the defense has been established as the correct one to be applied in Federal criminal cases. However, since the entrapment defense has not been held by the Supreme Court to be of constitutional dimension, the States are free to adopt either the subjective or objective view of the defense. The majority of States have adopted the subjective interpretation of the defense;[43] others, the objective approach.[44] Among the States which have adopted the latter, some have done so by decision of the highest court of the State;[45] the remainder have done so by statute.[46]

It is important that police officers at the State and local level determine which view of the entrapment defense has been adopted in their jurisdictions because, as has been suggested, the objective view of this defense is much more restrictive on police investigations than the subjective view. This is true because evidence of the defendant's predisposition to commit the charged offense is irrelevant in those jurisdictions which espouse the objective test. Thus, police work which might be deemed acceptable in a jurisdiction holding to the subjective view might be considered improper in a jurisdiction where there is adherence to the objective idea.

Finally, regardless of what interpretation of the entrapment defense prevails in a particular jurisdiction, it is important for law enforcement officers from all jurisdictions to recognize the existence of a separate, constitutionally based defense which may be available to a defendant regardless of predisposition. Such defense is grounded in due process and notions of fundamental fairness. This defense, as it has developed, is available as a remedy only in the extraordinary case in which law enforcement conduct has been found to be particularly overreaching. **FBI**

**Footnotes**

[1] 287 U.S. 435.

[2] *Id.* at 448.

[3] *Id.* at 451, 452.

[4] *Id.* at 456–459.

[5] *Id.* at 459.

[6] 356 U.S. 369 (1958).

[7] *Id.* at 371–377.

[8] *Id.* at 382–384.

[9] 468 F.2d 1027 (7th Cir. 1972).

[10] 454 F.2d 783 (9th Cir. 1971).

[11] 447 F.2d 903 (5th Cir. 1971).

[12] 459 F.2d 671 (9th Cir. 1972).

[13] *Id.* at 673.

[14] *Id.* at 674. U.S. Const. amend. V states in part: ". . . nor shall any person . . . be deprived of life, liberty, or property, without due process of law." Similar language, operative against the States, is found in U.S. Const. amend. XIV.

[15] 411 U.S. 423 (1973).

[16] *Id.* at 433.

[17] *Id.* at 434, 435.

[18] *Id.* at 431, 432.

[19] 425 U.S. 484 (1976).

[20] *Id.* at 492, note 2.

[21] *Id.* at 491–493.

[22] *Id.* at 499.

[23] 588 F.2d 373 (3d Cir. 1978).

[24] *Id.* at 381.

[25] *Id.* at 378, 379 (due process); *supra* note 5 (objective view).

[26] *United States* v. *Wylie*, 625 F.2d 1371, 1378 (9th Cir. 1980) (due process); *supra* note 4, at 457 (objective view).

[27] *Supra* note 23, at 385.

[28] *Supra* note 19, at 495, note 7.

[29] 342 U.S. 165 (1952).

[30] *United States* v. *Johnson*, 565 F.2d 179, 181 (1st Cir. 1977); *United States* v. *Leja*, 563 F.2d 244, 246 (6th Cir. 1977); *United States* v. *Quinn*, 543 F.2d 640, 648 (8th Cir. 1976); *United States* v. *Smith*, 538 F.2d 1359, 1361 (9th Cir. 1976); *United States* v. *Artuso*, 618 F.2d 192, 196 (2d Cir. 1980); *United States* v. *Tavelman*, 650 F.2d 1133, 1140 (9th Cir. 1981).

[31] *United States* v. *Johnson*, *supra* note 30, 182.

[32] The due process defense has been successfully raised in two Federal district court cases: *United States* v. *Janotti*, 501 F.Supp. 1182, 1204 (E.D. Pa. 1980); *United States* v. *Batres-Santolino*, 30 Cr.L. 2004 (N.D. Cal. 1981). For recent Federal cases which have rejected defense claims of due process violations, see note 30, *supra*; notes 33, 37, 39, 40, *infra*. See also, *United States* v. *Bocra*, 623 F.2d 281 (3d Cir. 1980); *United States* v. *Gentry*, 642 F.2d 385 (10th Cir. 1981); *United States* v. *Fekri*, 650 F.2d 1044 (9th Cir. 1981); *United States* v. *Diggs*, 649 F.2d 731, 738, note 6 (9th Cir. 1981).

[33] *United States* v. *Lentz*, 624 F.2d 1280, 1288 (5th Cir. 1980); *United States* v. *Nunez-Rios*, 622 F.2d 1093 (2d Cir. 1980); *United States* v. *Caron*, 615 F.2d 920 (1st Cir. 1980); *United States* v. *Perez*, 600 F.2d 782, 785 (10th Cir. 1979); *United States* v. *Wylie*, 625 F.2d 1371, 1378 (9th Cir. 1980).

[34] *Supra* note 23, at 380; *supra* note 19, at 491; *supra* note 15, at 432; *United States* v. *Myers, et al.*, 29 Cr.L. 2421, 2423, (E.D. N.Y. 1981).

[35] *Supra* note 33.

[36] *Supra* note 23.

[37] *United States* v. *Brown*, 635 F.2d 1207 (6th Cir. 1980).

[38] *Id.*

[39] *Supra* note 23; *United States* v. *Gray*, 626 F.2d 494, 498 (5th Cir. 1980); *United States* v. *Nunez-Rios*, 622 F.2d 1093 (2d Cir. 1980); *United States* v. *Corcione*, 592 F.2d 111, 115 (2d Cir. 1979).

[40] *United States* v. *McQuin*, 612 F.2d 1193, 1196 (9th Cir. 1980); *United States* v. *Johnson*, 565 F.2d 179, 182 (1st Cir. 1977).

[41] *United States* v. *Archer*, 486 F.2d 670, 677 (2d Cir. 1973).

[42] *United States* v. *Janotti*, *supra* note 32, at 1204; *United States* v. *Myers, et al.*, *supra* note 34, at 2423.

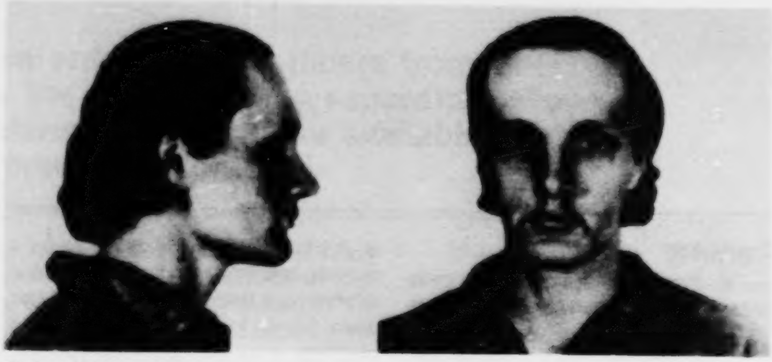
[43] 21 Am.Jur.2d 372; see, e.g., *State* v. *Anderson*, 16 Wash. App. 553, 558 P.2d 307 (1976); *State* v. *Hogerworst*, 90 N.M. 580, 566 P.2d 828 (1977).

[44] 21 Am.Jur.2d 375.

[45] See, e.g., *People* v. *Barraza*, 23 Cal.3d 675, 153 Cal. Rptr. 459, 591 P.2d 947 (1979).

[46] See, e.g., *Commonwealth* v. *Jones*, 242 Pa. Super. 303, 363 A.2d 1281 (1976).

# WANTED BY THE FBI



*Photographs taken 1972.*

**Carl Alfred Eder**

Carl Alfred Eder, also known as Charles Eder, Charles Harrison, and John Wehee.

**Wanted for:**

Interstate Flight—Murder

**The Crime**

Eder, who is being sought as an escapee from custody, was serving a life sentence for the murders of a woman and her four children at the time of his escape. The victims were stabbed and shot repeatedly.

A Federal warrant was issued for his arrest on October 18, 1974, at Bakersfield, Calif.

**Description**

| | |
|---|---|
| Age | 39, born June 30, 1942, Rochester, N.Y. |
| Height | 6′2″. |
| Weight | 165 to 175 pounds. |
| Build | Slim. |
| Hair | Blond, with receding hairline. |
| Eyes | Blue. |
| Complexion | Fair. |
| Race | White. |
| Nationality | American. |
| Occupations | (In prison) cabinetmaker, lab technician, leatherworker, machinist, boat engine mechanic. |
| Scars and Marks | Scar on left hand between thumb and forefinger, scar from gallbladder surgery. |
| Remarks | Follower of Zen Buddhism, a loner, recluse, and an outdoor type. |
| Social Security No. Used | 557-92-5576. |
| FBI No. | 144 932 D. |

**Caution**

Eder has stated that he will go to any length to avoid recapture. Consider him armed, extremely dangerous, and an escape risk.

**Notify the FBI**

Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone number of which appears on the first page of most local directories.

**Classification Data:**

NCIC Classification:
185408050819TT081007

Fingerprint Classification:
18 M 1 R I I I 8 Ref: T T R
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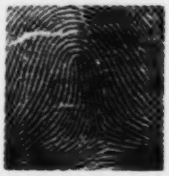

*Right index fingerprint.*

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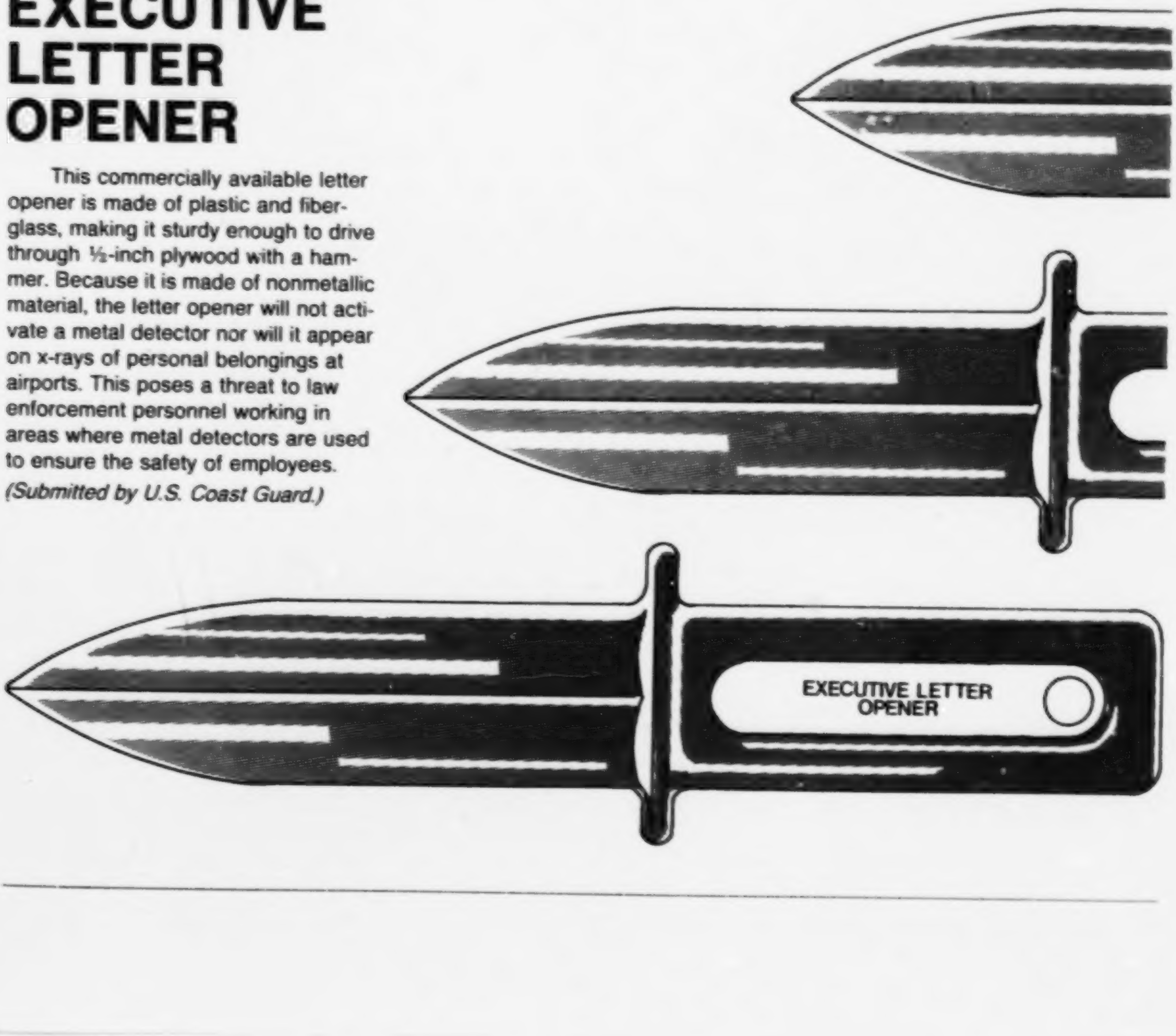

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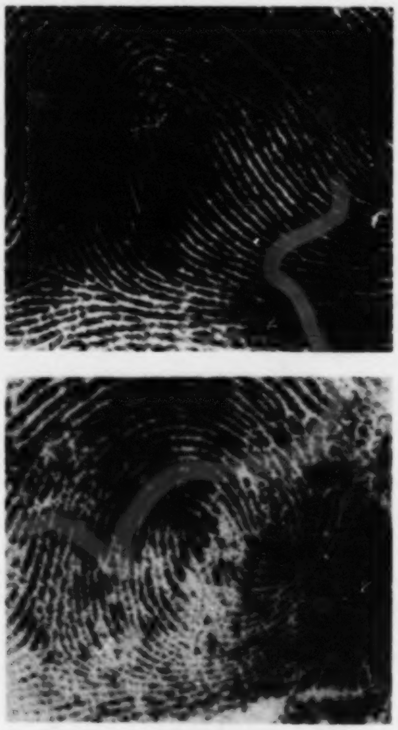

51/3

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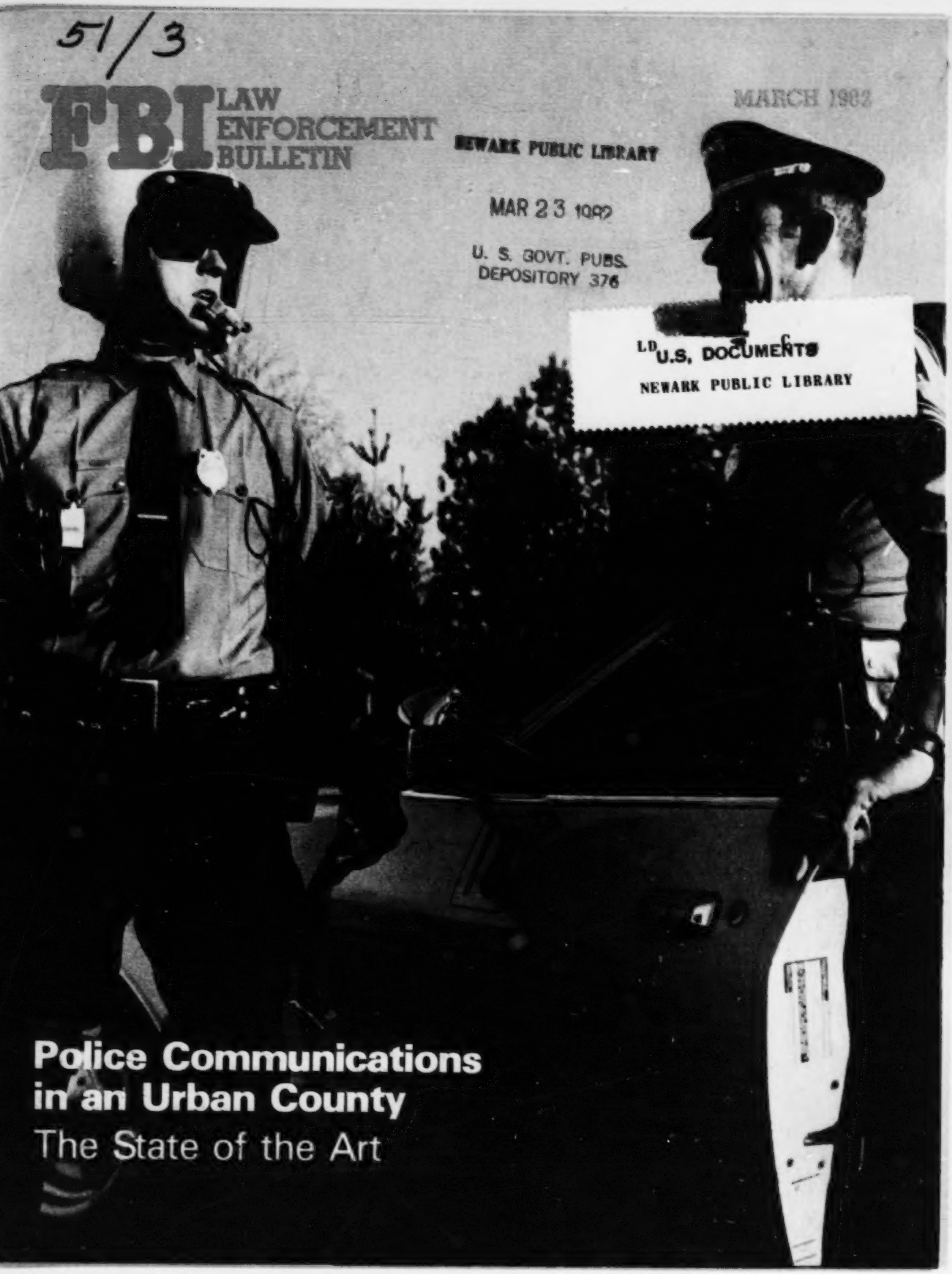

## Police Communications in an Urban County

### The State of the Art

# FBI LAW ENFORCEMENT BULLETIN

MARCH 1982, VOLUME 51, NUMBER 3

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**The Cover:**
Population growth in many areas has necessitated the development of more sophisticated communications systems.

**Federal Bureau of Investigation**
**United States Department of Justice**
**Washington, D.C. 20535**

**William H. Webster, Director**

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through December 28, 1983.

Published by the Office of Congressional and Public Affairs,
Roger S. Young
Assistant Director

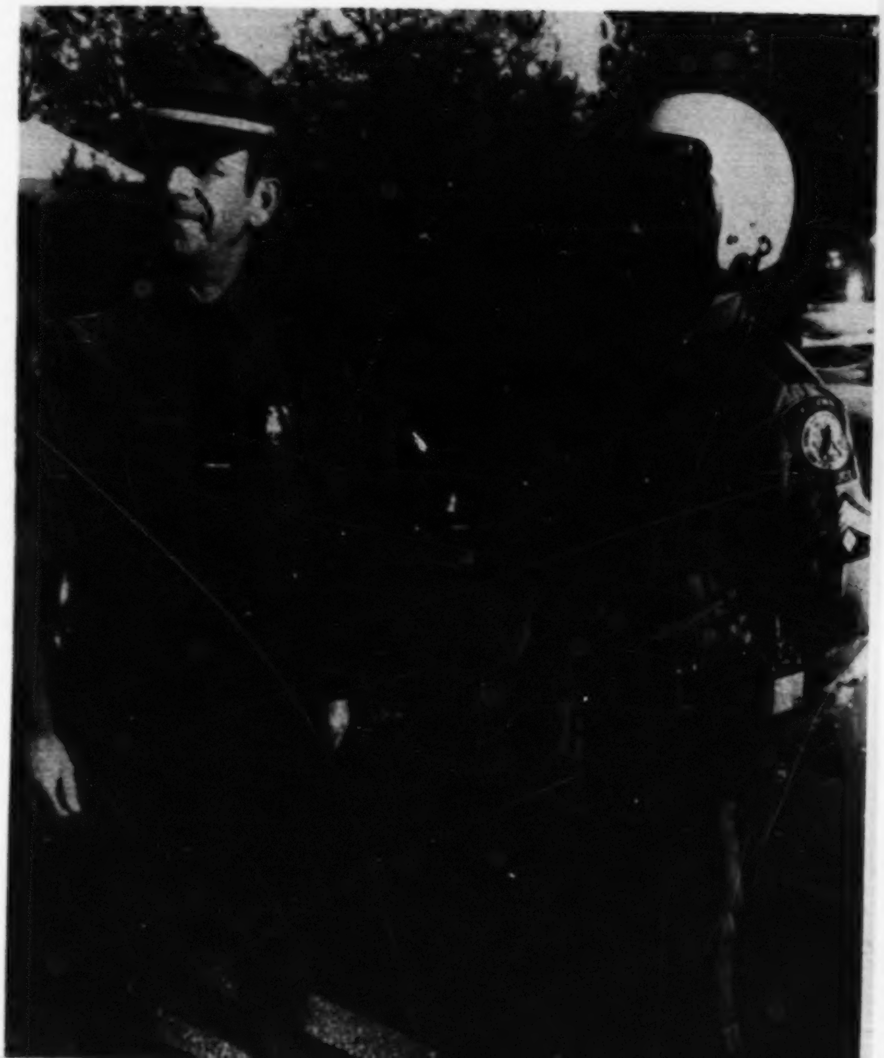
*Editor*—Thomas J. Deakin
*Assistant Editor*—Kathryn E. Sulewski
*Art Director*—Kevin J. Mulholland
*Writer/Editor*—Karen McCarron
*Production Manager*—Jeffrey L. Summers

ISSN 0014-5688
USPS 383-310

# Police Communications in an Urban County

## The State of the Art

By
MAJ. J. ROBERT LINDSEY
*Executive Officer*
*Henrico County Division of Police*
*Richmond, Va.*



Major Lindsey

Col. Leslie T. Sheppard
Chief of Police

## History and Background

Henrico County, Va., is a modern, progressive community located on the north, east, and west boundaries of the City of Richmond, Va. Like many localities similarly situated on the outskirts of larger cities, it is both urban and rural in makeup and has experienced accelerated growth in the past 30 years, both in population and government services. Its 1950 population of 57,345 was served by a police complement of 21, who responded to 5,396 calls for service, and its 1980 population of 180,725 generated 82,355 calls for service by the present police complement of 486 members. The communications systems during those and the intervening years ranged from the 1950 cumbersome radio monitoring/telephone relay of calls for service through an adjacent jurisdiction to the 1980 VHF dual-channel simplex system, which had been modified and expanded over a 30-year period so that growing demands could be met.

In order to provide needed space, the system was moved in 1965 to a communications center in the Emergency Operations Center, located in the eastern portion of the county. The new 600-square foot location accommodated one police and one fire console, three six-position telephone sets, and four communications officers per shift.

By the spring of 1975, the existing emergency communications systems were overburdened. To remedy the situation, an additional VHF police channel was placed in service, providing one frequency for each end of the county, thus reducing channel congestion. More telephones were added, along with a central switchboard to service them, and additional personnel were authorized. Those measures were recognized as stopgap in nature, and in 1977, the telephone communications network again required upgrading. As a consequence, the entire communications system became the subject of an intensive study—one which led to the present day configuration.

## The Study

The major objective of the study was to develop a radio network which would eliminate two principal weaknesses: 1) Channel crowding caused by increased emergency service response to county growth; and 2) reception impairments in several parts of the county, created by its topography, its size of approximately 245 square miles, and the placement of the only transmitter in the eastern section of the county—a condition that was eased by the placement of an additional transmitter site in the western part of the county in 1977.

The three primary areas of the study were designed to define a radio system which would meet the county's emergency communications needs, provide budgetary cost data for financial planning, and decide what rationale would be used for the selection of the recommended system.

To predict adequately immediate and future requirements, the following data elements were collected and analyzed:

1) Number of calls for service placed on the communications system,
2) Average number of transmissions per call for service,
3) Average message length,
4) Anticipated county growth,
5) Anticipated growth of the division of police and other emergency services on the system.

The final recommendations of the study were to:

1) Construct a new communications center to be located in the planned public safety building. This would provide for both future expansion and flexibility. The past had shown that communications demands would increase, causing larger space needs. Since future budgetary limitations were likely to restrict expansion, space and flexibility needs should be met early.
2) Provide for an additional transmitter site comparable to the existing one in the east for the western portion of the county. In addition, satellite receivers were to be constructed to enable field unit transmissions to be received from any location within the county.
3) Provide five UHF duplex frequencies for dispatch purposes, plus one channel each for future mutual aid use with other jurisdictions and a simplex frequency for local, tactical use. In calculating channel requirements, a standard of 5 seconds maximum wait to gain access to any frequency during the peak traffic hours of any week was used.
4) Convert to an all-portable operation to provide for constant communication with all field personnel. The key factors considered in this decision were primarily officer safety, which is achieved by constant availability of radio communications, and reduction of vehicle downtime associated with the mobile radio system.
5) Continue to act as a joint service to both fire and police operations—to be a public safety communications center.

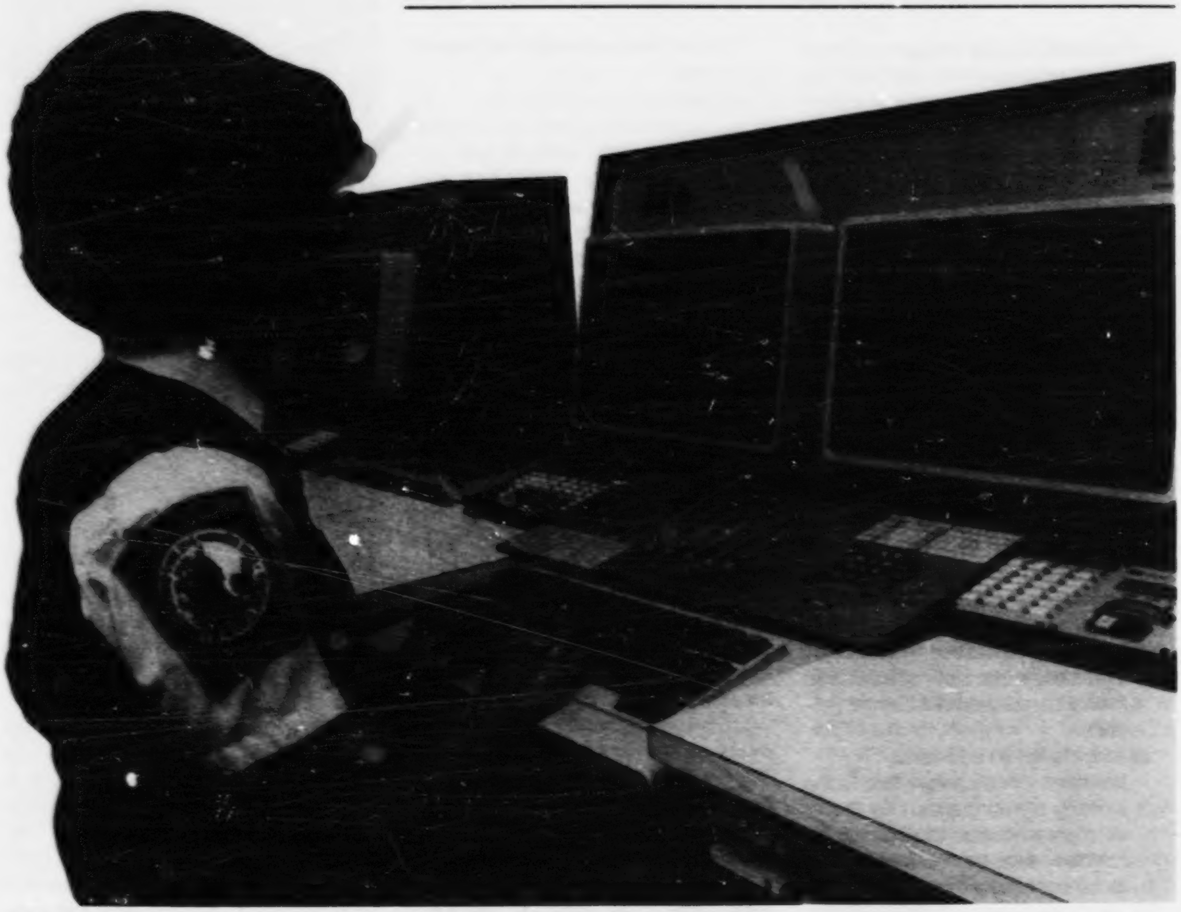
The only significant problem not solved was the restriction on the tower height in the eastern portion of the county, created by its proximity to the metropolitan airport. Relocation was not economically feasible and reception is still not at a desirable level in a few isolated locations at the outermost boundaries.

Certain decisions had major impacts on the functioning of the radio system. One decision was to divide the county into two geographical radio dispatch areas—one in the east and one in the west. Each of these would be subdivided into two dispatch sectors synonymous with indicated patrol sectors. In turn, the patrol sectors were composed of individual patrol areas or "beats," in which one officer was normally responsible for handling calls. Either of the frequencies assigned to the dispatch sectors is sufficient to cover the entire geographical area.

This allowed for flexibility in assigning communications personnel in accordance with anticipated workloads and calls for service. During all shifts, the countywide frequency primarily serves the police administration, investigators, sheriff's department, and the three volunteer rescue squads and is operational along with two patrol frequencies—one each for the eastern and western geographical radio dispatch areas during the day and midnight shifts. From 9:30 p.m. to 1:30 a.m., all five frequencies, including the two additional patrol frequencies, are operational. The increased capability during these latter hours provides improved access time for the greater number of patrol units available during the overlap period when two uniform platoons are on patrol. This overlap occurs during the peak calls-for-service time period and is created by the scheduling of four, 10-hour days for both communications and patrol personnel.

A second decision impacting on the functioning of the radio system was that requests for proposals by companies desiring to provide the radio system be performance-related. The proposal specified a 97-percent radio coverage requirement. The number and location of satellite receivers were not specified, and although the use of governmentally owned sites was encouraged, this was left to the discretion of the successful vendor. This proved extremely beneficial when, in the first several weeks of use of the new system, it was found that additional satellite receivers were necessary because of poor reception from four areas in different parts of the county. These receivers were provided by the vendor without additional cost to the county.

**". . . Henrico County has moved from the 'dark ages' to a 'state of the art' in the area of communications."**



*A telephone-responsive console features a 911 control panel, radio controls, and a playback recorder which permits review of calls received during the last 30 minutes.*

### System Elements

One-watt portable radios were purchased to ensure adequate battery life during a member's tour of duty. Even though the shifts are now 10 hours long, battery life is not a problem. In addition, sufficient batteries were acquired to permit each shift to have color-coded, fully charged replacements available when reporting for duty. Investigators, undercover personnel, and a limited number of staff officers are provided with vehicular-mounted chargers from which the radio is taken when exiting the vehicle.

For the uniformed officer, additional accessories include a speaker/microphone/antenna combination which is attached to the officer's epaulet by means of a velcro fastening. Each officer is issued a leather carrying case for the radio, which attaches to the gun belt.

In keeping with the concern for officer safety, radios are equipped with a unique identifier. Whenever a unit transmits, a data burst identifies that unit on the console serving the radio's frequency. Should an officer require immediate assistance and be unable to transmit by voice, he may pull a ring located on the radio, signifying a "mayday." This, in turn, causes the radio number on the console to flash and an audible signal alerts the console operator to the situation.

There are now 20 satellite receiver sites located throughout the county. Each site is equipped with a minimum of three complete receivers and a battery that will sustain the receivers for 24 hours in the event of a power failure.

Most satellite receiver sites consist of a 100-foot, self-supporting tower and antenna. The equipment is housed in an all-weather cabinet enclosed by an 8-foot chain link fence. When it was practical, existing structures were used—antennas were mounted on forest fire lookout towers or elevated water tanks. In some instances, it was possible to mount the equipment inside available buildings.

All transmissions to the eastern portion of the county emanate from the communications center to the transmitter located at the emergency operating center, via dedicated land lines. Conversely, field unit transmissions are routed to the communications center via the voted receiver in the east, to the emergency operating center, and then by land line.

Each radio channel has a minimum of two base/repeater stations that are used alternately every 12 hours to reduce maintenance potential which increases when the equipment is not frequently used.

The decision to locate the western transmitter off the government center where the public safety building is located was based on two considerations—aesthetics and economics. The availability of a tower near the government center played a major role in this decision. Although the transmitter receivers are routinely serviced by dedicated land lines, low-powered transmitters located in the public safety building can serve as control stations when required.

## Communications Center and Personnel

The new communications center, located in the public safety building, is approximately 5,500 square feet, with approximately 1,400 square feet being devoted to current and future console operations. The remaining space houses peripheral radio equipment including console-controlling microprocessing equipment, telephone and computer equipment, a lounge for communications officers, a public viewing area, and fire suppression equipment. Offices are provided for the communications staff, support personnel, and the necessary printing and recording equipment. The former communications center, located in the emergency operating center, has been converted to permit limited operations in the event that the new center has to be evacuated for any reason.

There are two major functions of the communications center's 15 radio consoles. The first function—that of receiving calls for service—is handled by eight consoles. This type of console is telephone responsive, but has radio controls to enable the operator receiving the call to immediately dispatch the appropriate number of field units. More personnel are required to provide this type of service; however, this approach has helped to eliminate dispatch delay, a frequent problem under the old system. This, in turn, has eliminated some of the citizen dissatisfaction in the area of complaint reception. The second function is performed on six consoles that respond to field personnel. One is used to dispatch fire equipment, and five other service the functional police areas and are manned according to the need, based on the time of day. These positions are equipped with considerably more radio capability than the telephone positions. In addition to the five dispatch frequencies, these consoles may monitor broadcasts from adjoining police and fire jurisdictions, transmit and receive on the statewide interdepartmental radio system (SIRS) and on the VHF high-band channel used for covert surveillance, and transmit to the radio pagers issued to key personnel.

Both the telephone and service consoles are linked to a second element of the communications center—the county's communications computer. The software which operates the computer is centered around the computer aided dispatch (CAD), which serves five target areas:

1) Unit management maintains control of the various field units' status with respect to availability or nonavailability. Any unit's activities can be traced through the system for an entire tour.
2) Call management maintains control of calls-for-service status, including all pending or inprogress calls.

**"The present communications system now provides efficient response to citizen needs, greater officer safety, and management information. . . ."**

3) Unit services provide specific information to the officer, such as vehicle inquiries, whether a vehicle has been stopped recently, etc.
4) Dispatcher service determines the three closest units able to respond to a given call, indicates certain types of questions to be asked of the complainant based on the type of call for service, and makes the dispatcher aware of certain messages connected with an address.
5) Locational assistance identifies the call as to location and provides cross streets and map page information. It also indicates whether the address is considered hazardous, whether a police officer resides there, or whether previous calls have been received there. The address look-up function of CAD is based on determining in which of 623 geographic areas of the county (small reporting areas) the call is located. These geographic areas use the Census Bureau's Dual Independent Map Encoding (DIME) file, which assigns street segments to census blocks.

Because of the availability of in-house expertise, the CAD system was developed by county personnel, as opposed to outside consultants. The willingness of the county's data processing staff to aid in this development and their capability to modify programs quickly as the need might arise have proven to be both productive and cost-saving.

The CAD system uses two cathode ray tubes (CRT) on each console. One tube provides the available/unavailable status of field units and calls pending or in progress. The status screen provides a flashing cursor beside any unit number that has been out of service in excess of a predetermined time for the nature of the call. Every status screen is automatically updated each time any unit's status is revised.

The other CRT is used for logging complaints and various types of inquiries. Through the computer, inquiries may be made to the Virginia Division of Motor Vehicles, Virginia Criminal Information Network (VCIN), National Law Enforcement Telecommunications System (NLETS), and National Crime Information Center (NCIC). The 15th console is the command position. It is always manned by the platoon sergeant or a senior communications officer. This position can perform any function possible on other consoles. The supervisor may provide a telephone to radio connection. Since it is possible to provide cross-channel communications between any two fre-

*The field service console has greater radio capability and a high-speed projector for sectional maps.*

quencies controlled by the center, a division member may communicate with a State trooper by the "marrying" of UHF to the low-band SIRS network.

The command console can take over any or all positions. The supervisor can remotely monitor activity at any console, monitor any one of the telephones or radio frequencies taped on a 40-channel recorder, or determine which satellites are being "hit" by a field unit's transmission and which satellite is voted. This is the position which may disable repeaters when rebroadcast is not desirable or remotely activate or deactivate transmitters or receivers at locations across the county. The staff of the center consists of a captain, a lieutenant, 5 sergeants, 3 police officers, 5 senior communications officers, 51 communications officers, and a secretary. Each platoon consists of a sergeant, a senior communications officer, and 10 communications officers. The three police officers comprise the telephone reporting unit (TRU). They are assigned to the day and evening shifts and were responsible for handling 8 percent of the approximately 82,300 calls for service received in fiscal year 1980.

## Planning and Implementation Considerations

Given the cost of the radio system—$1,450,000—and the vast benefits of the system to the citizens of Henrico County as well as to the division, considerable personnel efforts were expended.

Planning for the CAD involved a cross section of law enforcement and communications personnel. The 623 small reporting areas were designed by this group, and a subcommittee of the group, composed of patrol personnel, designed the response table matrix to determine the best unit in a priority sequence to respond to each small reporting area. The division's advisory committee, composed of both civilian and sworn personnel of all ranks, recommended the appropriate time out for each type of assignment. Output requirements for data to be captured were specified by both the command staff and users.

When dealing with computers, contingency plans must be made for downtime. In this system, two computers are available. In the event both fail, procedures exist for a reversion to the manual card system. Status is then tracked on a modified bingo flash board which was designed and constructed by five engineers from the telephone company and a sergeant, all of whom volunteered their time and talent. This device is controlled by relays activated through the telephone touch pads. Any of the 15 console operators may activate or deactivate status lights visible to the entire center when the computer is out of service.

Another contingency feature is a direct-line teletype not connected through the computer. This allows inquiries of a priority nature in the event the primary system fails.

Major personnel efforts were expended in updating the census' DIME file. Time constraints and the need to update the file from its 1976 level of street segments forced the division, and specifically the police planning section, to do its own updating. An accurate and up-to-date DIME file was critical to the success of the locational assistance aspect of the CAD system. Not only was the DIME file updated, but additional files were built to provide names of businesses, apartment complexes, shopping centers, banks, etc., when addresses were not commonly provided, as well as to provide for the development of a street alias file. These files have provided an address match of more than 90 percent of all calls for service received since the system was placed in operation in May 1981.

Training time was significant for both field and communications personnel. Every effort was made to acquaint all division personnel with major aspects of the system, and communications officers underwent intensive training. Information relating to changes or improvements in the system are provided on a monthly basis through the division newsletter.

## Conclusion

In the past 3 decades, Henrico County has moved from the "dark ages" to a "state of the art" in the area of communications.

Through the years, many dedicated public safety people have contributed their efforts to this successful project. In addition, the support of the board of supervisors and the county administration was considerable, indicating their faith in the Department of Public Safety and the needs of the county. The present communications system now provides efficient response to citizen needs, greater officer safety, and management information, which will allow for improved use of resources and a means to maintain an effective communications system. **FBI**

Police Conduct

# Police Administrators' Attitudes Toward the Definiton and Control of Police Deviance

By
TOM BARKER, Ph.D.
*Dean*
*College of Criminal Justice*
*Jacksonville State University*
*Jacksonville, Ala.*
and
ROBERT O. WELLS
*Doctoral Student*
*School of Criminology*
*Florida State University*
*Tallahassee, Fla.*

Only within the last 10 years has the problem of police deviance, especially corruption, been the subject of empirical research. Although the topic has been the subject matter of polemical debate since the establishment of the first paid police forces, empirical research to determine the causes of, attitudes toward, and means to control police deviance is still scarce. Even though there have been some noteworthy exceptions to this statement,[1] the pervasiveness of the phenomenon and the serious nature of the problem have not been matched by social scientific research interest. This is especially true in the area of police administrators' attitudes toward the definition and control of police deviance, especially corruption. Yet, few would deny the importance of the chief's role in preventing, controlling, and eliminating police corruption and other forms of police deviance. Police deviance, particularly in the form of corruption, is not only contrary to the police mandate and organizationally divisive and disruptive but in many cases it makes the chief and other members of the department subject to criticism, dismissal, and/or prosecution.

Although all members of the police command structure are, or should be, accountable for the performance of their men, the ultimate responsibility for corrupt behavior and other forms of police misconduct by any police officer and the integrity of the department rests with the police chief. Those areas in which the chief should be active include establishing an internal affairs unit to eradicate all patterns of misconduct, including corruption; being personally honest and being determined that his men will be honest also; and being willing to pay the price for virtue.[2] In addition, it is important that the chief take a public stance against corruption as a means of controlling it.[3] This includes written rules and regulations which explicitly define the administrator's position on behaviors which he believes are corrupt.

Recognizing the importance of administrative action in the prevention and control of police misconduct, we surveyed police chiefs in one southern State in order to determine their attitudes toward the definition and control of police corruption and other patterns of police deviance. Specifically, the chiefs were asked to define certain patterns of police misconduct as corruption, whether their department had rules and regulations covering these behaviors, and what action, if any, they would take if officers in their departments were discovered engaging in these types of behavior. These are the areas which appear to be most directly under the direction of the chief in his efforts to prevent and control police misconduct.

*Dr. Barker*

**Police Occupational Deviance**

The patterns of police behavior to be discussed in this study are examples of a general pattern of deviant behavior (norm- or rule-violating behavior) known as occupational deviance, i.e., deviant behavior (criminal and noncriminal) committed during the course of "normal" work activities. Police occupational deviance refers to all deviant acts, i.e., violations of criminal laws, departmental rules and regulations, and ethical police standards, which occur during the course of occupational activity and are related to employment as a police officer.[4] These are acts which can be committed only by a police officer or acts which are made possible, facilitated, or directly related to the police occupational role.

Specifically, the patterns of police occupational deviance to be examined are police corruption and police misconduct not directly related to police corruption. (See fig. 1.)

**Police Corruption**

Technically speaking, police corruption is an example of police misconduct, but we view it as a unique form of police misconduct. Specifically, police corruption is any proscribed act which involves the misuse of the officer's official position for actual or expected material reward or gain.[5] In other words, corrupt acts contain three elements: (1) They are forbidden, (2) they involve the misuse of the officer's official position, and (3) they involve a material gain no matter how insignificant. There are at least 10 patterns of corrupt behavior which fit this definition.[6] (See fig. 2.)

**Police Misconduct Not Related to Corruption**

Police misconduct not related to corruption, hereafter termed "police misconduct," is any pattern of behavior which meets two basic criteria: (1) It is a form of police occupational deviance and (2) the behavior does not involve a material reward or gain. Examples of police misconduct include police perjury, police brutality, sex on duty, sleeping on duty, drinking on duty, and other rule violations not involving a material reward or gain.[7] The specific patterns of police misconduct to be examined in this study are: (1) Sleeping on duty, (2) hitting handcuffed prisoners, a form of police brutality, (3) having sex on duty, (4) speeding in patrol cars, (5) personal shopping on duty, and (6) drinking on duty.

---

*Figure 1*

**Deviant Behavior**
(Norm- or Rule-violating Behavior)

**Occupational Deviance**
(Deviant Behavior—Criminal and Noncriminal—Committed During the Course of "Normal" Work Activities)

**Police Occupational Deviance**

**Corruption**
(Involves a Material Reward or Gain

1) Corruption of authority
2) Kickbacks
3) Opportunistic Thefts
4) Shakedowns
5) Protection of Illegal Activities
6) Traffic Fix
7) Misdemeanor Fix
8) Felony Fix
9) Direct Criminal Activities
10) Internal Payoffs

**Misconduct**
(No Material Reward or Gain)

Police Perjury

Police Brutality
Sex on Duty

Drinking on Duty
Sleeping on Duty

Other Violations not involving material reward or gain

*Figure 2*

### PATTERNS OF POLICE CORRUPTION

1) **Corruption of Authority**
Officer receives unauthorized free meals, services or discounts, and liquor.
2) **Kickbacks**
Officer receives money, goods, or services for referring business to towing companies, ambulances, garages, etc.
3) **Opportunistic Thefts**
Opportunistic thefts from arrestees, victims, burglary scenes, and unprotected property.
4) **Shakedowns**
Officers take money or other valuables from traffic offenders or criminals caught in the commission of an offense.
5) **Protection of Illegal Activities**
Protection money accepted by police officers from vice operators or legitimate businesses operating illegally.
6) **Traffic Fix**
"Taking up" or disposing traffic citations for money or other forms of material reward.
7) **Misdemeanor Fix**
Quashing of misdemeanor court proceedings for some material reward or gain.
8) **Felony Fix**
"Fixing" felony cases for money or other forms of material gain.
9) **Direct Criminal Activities**
Officers engage in serious felonies, such as burglary, robbery, and larcenies.
10) **Internal Payoffs**
The sale of days off, holidays, work assignments, etc., from one officer to another.

## Method

The principal data-gathering instrument for this study was a four-part mail survey questionnaire. The first part of the questionnaire consisted of 10 open-ended questions designed to gather general information about the respondent and his police department. The second section contained 30 questions concerned with the existence of written rules and regulations governing the 16 patterns of police misconduct. The third part of the questionnaire dealt with the subject's opinion as to whether the behaviors actually constituted police corruption. Finally, the last section was used to determine what actions, if any, the respondents would take if officers in their department engaged in the behaviors.

## Sample

The population consisted of all police chiefs in a southern State. We compiled a list of 307 police agencies from two sources, *Crime in the United States—1978* and a list entitled "Police Agencies—State of __________—February 1979," which was obtained from a police academy in the State. We decided to survey all departments with five or more sworn police officers. Several methods were used to determine the size of each department in the population. *Crime in the United States—1978* listed the number of officers in 277 of the 307 departments, and a member of the police academy staff was able to supply information on 19 of the missing 30 departments. The remaining 11 departments were contacted by phone. The final sampling frame consisted of a total of 190 police agencies having 5 or more sworn police officers—114 departments with 10 or more officers and 76 departments with 5–9 sworn officers.

As a result of the initial mailing and two followup mailings, we received 115 useable questionnaires. This represents an overall response rate of 61 percent. The response rate varied directly with the size of the department from a low of 54 percent for departments with 5–9 members to a high of 76 percent for departments having 50 or more members. (See table 1.)

## Rules and Regulations

Each respondent was asked to indicate whether his department had written rules and regulations covering the various patterns of police deviance. Twenty-eight or 24 percent of the chiefs reported that their respective departments had no written rules and regulations. As one would suspect, this was directly related to the size of the department. Forty percent of the smaller departments, under 9 members, had no written rules and regulations, but only 2 of the departments with over 20 members had no written rules and regulations.

Table 2 reports the results on rules and regulations for each of the 16 patterns of police deviance. Over 50 percent of the departments had no rules and regulations specifically dealing with any of the examples given for the first pattern of police corruption—"corruption of authority." Accepting free meals from restaurants was the

***Table 1***

Response Rate By Size of Department

| Size of Department | No. of Departments | Number | Percentage |
|---|---|---|---|
| 5–9 members | 76 | 41 | 54 |
| 10–19 members | 58 | 34 | 59 |
| 20–29 members | 25 | 17 | 68 |
| 30–49 members | 14 | 10 | 71 |
| 50 or more | 17 | 13 | 76 |
| | 190 | 115 | |

one example where there was an almost even split on departments having rules and regulations forbidding this form of behavior—49 percent had rules and regulations covering this activity, 51 percent did not. For the remaining examples of police corruption, there were only three instances where over 50 percent of the departments had no rules and regulations addressing the form of corruption, viz., accepting money from bondsmen (52 percent)—an example of "kickbacks"—and giving and/or taking money for easy work assignments (55 percent) and giving and/or taking money for vacation time (61 percent), both examples of "internal payoffs." In no example did 100 percent of the departments have rules and regulations specifically addressing or mentioning this behavior.

## OPINIONS TOWARD POLICE DEVIANCE

### Is the Behavior Police Corruption?

In table 3 we are interested in the extent of agreement or disagreement between our definition and the respondents' definition of behaviors which constitute police corruption. As mentioned earlier, we classified the forms of police deviance into two categories: (1) Police corruption—a norm- or rule-violating act which also involves a material reward or gain, and (2) police misconduct—a norm- or rule-violating act which does not involve a material reward or gain. For us, the distinction between the two categories of behavior is the presence or absence of a material reward or gain. We were interested in seeing if the police chiefs also would make this distinction.

The first pattern of corruption to be presented is "corruption of authority."[8] This pattern includes many actions which some find insignificant, and it is the only pattern of corruption which *may* not involve criminal intent or some misuse of the officer's position at the time of the act. Nevertheless, the officer's integrity and position have been compromised. The officer has received some material reward or gain, and one or both parties to the act may expect some favorable treatment now or in the future. There is always the danger

***Table 2***

**DEPARTMENTAL WRITTEN RULES AND REGULATIONS *SPECIFICALLY* ADDRESS OR MENTION THIS BEHAVIOR?**

| PATTERN OF DEVIANCE | RULES & REGULATIONS (Reported in %) | |
|---|---|---|
| CORRUPTION | YES | NO |
| 1) **Corruption of Authority** | | |
| a. Free cup of coffee | 35 | *66 |
| b. Accepting free meals from restaurants | 49 | 51 |
| c. Using badge for free admission to movie | 30 | 70 |
| d. Accepting Christmas gifts | 35 | 66 |
| 2) **Kickbacks** | | |
| a. Accepting money from bondsmen | 48 | 52 |
| b. Accepting money from lawyers for referral | 52 | 48 |
| c. Accepting money from wrecker drivers for referrals | 60 | 40 |
| 3) **Opportunistic Thefts** | | |
| a. Taking items from a burglary | 66 | 35 |
| b. Taking articles or money from a victim | 58 | **42 |
| c. Taking home found property | 54 | 46 |
| d. Taking lumber from construction site | 54 | 46 |
| 4) **Shakedowns** | | |
| a. Money from criminals | 61 | 39 |
| 5) **Protection of Illegal Activities** | | |
| a. Accepting money from bootlegger or prostitute | 61 | 39 |
| b. Accepting money from drug pusher | 54 | 46 |
| 6) **Traffic Fix** | | |
| a. Accepting money from traffic offenders | 74 | 27 |
| 7) **Misdemeanor Fix** | | |
| a. Accepting money for dismissing case | 68 | 33 |
| 8) **Felony Fix** | | |
| a. Accepting money for dismissing case | 67 | 33 |
| 9) **Direct Criminal Activity** | | |
| a. Policemen committing burglaries | 60 | 40 |
| 10) **Internal Payoffs** | | |
| a. Giving and/or taking money for easy work assignments | 45 | 55 |
| b. Giving and/or taking money for vacation time | 39 | 61 |
| MISCONDUCT | | |
| 1) Sleeping on duty | 84 | 16 |
| 2) Hitting a handcuffed prisoner | 69 | 31 |
| 3) Sex on duty | 66 | 35 |
| 4) Driving over speed limit on routine patrol | 71 | 29 |
| 5) Shopping for personal items on duty | 39 | 61 |
| 6) Drinking on duty | 90 | 10 |

N=87

*Some totals may not add to 100 percent because of rounding.

**Indicates a no response.

that an officer engaging in these "petty" forms of corruption may be started on a progression toward more serious ones. Police corruption for many officers often begins with the shared belief among the police peer group that "policemen have a right to a break," and the progression along the continuum of corruption is often so gradual that an officer is deeply involved before he realizes it. As table 3 indicates, this belief may not be shared by the respondents. Seventy-three percent of the respondents disagreed with the statement that accepting free coffee is police corruption. Nevertheless, 35 percent of the departments had rules and regulations specifically covering this behavior. It may be that the free cup of coffee is a traditional, accepted, and expected pattern of behavior in many of the responding departments. As the authors have heard on many occasions, those establishments that give free coffee are "good to the police" and those that do not are not. The implications of being labeled as "not being good to the police" are obvious. For the remaining examples of corruption of authority—free admission to movies, accepting Christmas gifts, and accepting free meals—the majority of the chiefs are either undecided or disagree with the acts being examples of police corruption, except that of an officer accepting free meals. In the last example a small majority, 51 percent, agreed that this is police corruption.

The second example of corruption was "kickbacks" and included accepting money from bondsmen, lawyers, or wrecker drivers. In each example, well over 50 percent of the respondents agreed that the behavior was police corruption. Ninety-three percent agreed that accepting money from either a lawyer or wrecker driver for referrals was police corruption, and 60 percent believed that accepting money from bondsmen was an act of corruption.

***Table 3***

### POLICE ADMINISTRATORS' BELIEF THAT BEHAVIOR IS AN EXAMPLE OF POLICE CORRUPTION

| PATTERN OF DEVIANCE | BEHAVIOR IS POLICE CORRUPTION (Reported in %) | | | | | |
|---|---|---|---|---|---|---|
| | STRONGLY AGREE (5) | AGREE (4) | UND. (3) | DISAGREE (2) | STRONGLY DISAGREE (1) | X SCORE |
| CORRUPTION | | | | | | |
| 1) **Corruption of Authority** | | | | | | |
| a. Accepting free coffee | 2 | 7 | 18 | 64 | 10* | 2.32 |
| b. Using badge for free admission to movie | 13 | 24 | 26 | 35 | 2 | 3.12 |
| c. Accepting Christmas gifts | 7 | 14 | 21 | 55 | 3 | 2.65 |
| d. Accepting free meals | 14 | 37 | 24 | 24 | 1 | 3.36 |
| 2) **Kickbacks** | | | | | | |
| a. Accepting money from bondsmen | 30 | 30 | 20 | 20 | – | 3.89 |
| b. Accepting money from lawyers | 42 | 52 | 5 | – | – | 4.33 |
| c. Accepting money from wrecker drivers | 53 | 41 | 1 | – | – | 4.4 |
| 3) **Opportunistic Thefts** | | | | | | |
| a. Taking items from a burglary | 80 | 21 | – | – | – | 4.79 |
| b. Taking articles or money from a victim | 76 | 23 | 1 | – | – | 4.66 |
| c. Taking home found property | 34 | 45 | 17 | 4 | – | 4.07 |
| d. Taking lumber from construction site | 67 | 30 | 1 | 0 | 2 | 4.57 |
| 4) **Shakedowns** | | | | | | |
| a. Accepting money from criminals | 84 | 16 | – | – | – | 4.84 |
| 5) **Protection of Illegal Activities** | | | | | | |
| a. Accepting money from bootlegger or prostitute | 81 | 19 | – | – | – | 4.81 |
| b. Accepting money from drug pusher | 85 | 13 | – | – | 2 | 4.78 |

There was also a general consensus among the respondents that each of the examples of "opportunistic thefts" was police corruption. One hundred percent agreed that taking items from a burglary scene was police corruption, and 99 percent also agreed that taking articles or money from a victim was corruption. Ninety-seven percent agreed that taking lumber from a construction site was police corruption, and 79 percent agreed that taking home found property was also an example of corruption.

For the next six patterns of corruption and their examples, "shakedowns," "protection of illegal activities," "traffic fix," "misdemeanor fix," "felony fix," and "direct criminal activities," there was 100 percent agreement that each of the examples was an act of police corruption, except for accepting money from a drug pusher—one of the examples under "protection of illegal activities." For some unexplained reason, two respondents (2 percent) disagreed with the statement that such behavior is police corruption.

There was also general agreement that both examples of the last pattern, "internal payoffs," were police corruption. Specifically, 82 percent of the respondents believed that giving and/or taking money for easy work assignments was police corruption, and 81 percent agreed that giving and/or taking money for vacation time was police corruption.

## Misconduct

As was stated earlier, the authors did not define the behavior to be discussed here as acts of corruption because they do not involve any material reward or gain. Again, as with corruption of authority, the respondents did not share our view of the behavior. In four of the six acts of misconduct, over 50 percent of the respondents considered the behavior to be corruption. Specifically, 53 percent believed that sleeping on duty was police corruption, 77 percent believed that hitting a handcuffed prisoner was police corruption, 82 percent believed that sex on duty was corruption, and 82 agreed with the statement that drinking on duty was corruption. The respondents certainly had a more liberal definition of corruption than the authors. We believe that the respondents are responding to how "wrong" or unprofessional they

| PATTERN OF DEVIANCE | BEHAVIOR IS POLICE CORRUPTION (Reported in %) | | | | | |
|---|---|---|---|---|---|---|
| | STRONGLY AGREE (5) | AGREE (4) | UND. (3) | DISAGREE (2) | STRONGLY DISAGREE (1) | X SCORE |
| 6) **Traffic Fix** | | | | | | |
| a. Accepting money from traffic offenders | 73 | 27 | – | – | – | 4.73 |
| 7) **Misdemeanor Fix** | | | | | | |
| a. Accepting money for dismissing case | 71 | 29 | – | – | – | 4.71 |
| 8) **Felony Fix** | | | | | | |
| a. Accepting money for dismissing case | 82 | 18 | – | – | – | 4.82 |
| 9) **Direct Criminal Activity** | | | | | | |
| a. Committing burglary | 87 | 13 | – | – | – | 4.87 |
| 10) **Internal Payoffs** | | | | | | |
| a. Giving and/or taking money for easy work | 41 | 41 | 10 | 6 | 2 | 4.24 |
| b. Giving and/or taking money for vacation time | 33 | 48 | 10 | 6 | 2 | 3.99 |
| **MISCONDUCT** | | | | | | |
| 1) Sleeping on duty | 20 | 33 | 15 | 30 | 1 | 3.36 |
| 2) Hitting a handcuffed prisoner | 50 | 28 | 8 | 12 | 1 | 4.05 |
| 3) Sex on duty | 44 | 38 | 10 | 7 | 1 | 4.14 |
| 4) Driving over speed limit on routine patrol | 7 | 28 | 16 | 44 | 5 | 3.0 |
| 5) Shopping for personal items on duty | 8 | 20 | 22 | 49 | 2 | 2.83 |
| 6) Drinking on duty | 54 | 29 | 5 | 9 | 4 | 4.21 |

N=115

*Some totals may not add to 100% because of rounding.

believe the behavior may be. Consequently, behaviors which violate the respondent's "wrongness" or "unprofessional" standard are equated with corruption. This is basically what one of the authors found in an earlier study.[9] In that study, members of a 50-man police department were asked to indicate on a scale of 0-9 how "wrong" they perceived various forms of police deviance to be. Sleeping on duty and sex on duty received scores of 8 and police brutality and drinking on duty received scores of 9. These scores were the same as the scores for the majority of the patterns of corruption.

For the remaining patterns of misconduct, the majority of the respondents did not believe the behavior was police corruption. Only 34 percent believed that driving over speed limits while on routine patrol was police corruption, and 28 percent believed that shopping for personal items on duty was an act of corruption.

**Reactions to Police Deviance**

Table 4 presents a summary of the data dealing with the action the chiefs would take if, and when, instances of police corruption were exposed within their departments. The subjects were presented a fixed choice question dealing with each of the patterns of police deviance. Choices of action were: Take no action, give an oral or written reprimand, suspension, request resignation, press criminal charges, and other. We grouped these actions into four categories ranked by severity of action. The first represents those chiefs who would take no action. The second category, labeled "low," contains those responses of suspension and reprimand. The "medium" category contains those responses resulting in the resignation or dismissal of the officer. Our decision to include the firing of an officer in the "medium" category rather than the "high" category was based on the authors' observations of the effects of a police officer being fired. In numerous "real life" situations observed by the authors, when an officer has been fired from one police department, he is often hired by another. This is especially likely if the officer is a certified police officer, i.e., completed his mandated training and receives his certification by the State's Police Officer's Standards and Training Commission. The possibility that the firing of an officer may mean only short term unemployment for the officer does not warrant placing this action in the "high" category. The "high" category was reserved for only those actions resulting in criminal charges against an officer.

**"In all but one of the examples, the majority of the chiefs would handle police corruption through in-house or departmental action."**

A study of table 4 reveals several obvious patterns in the actions that the police chiefs would take in response to the discovery of police corruption in their respective police departments. The most interesting point is that in only one instance did over half of the police chiefs indicate that they would take "high" action. Only for those officers discovered committing burglaries did 75 percent of the respondents indicate that they would press criminal charges. Even more surprising is the fact that 25 percent of the chiefs surveyed would take action of a "low" or "medium" nature against officers committing violations of such magnitude as burglary. For every pattern, except direct criminal activities (committing burglaries), the majority of the police chiefs would take either no action or action of "low" or "medium" severity. In other words, the chiefs would impose departmental sanctions. There are several dangers inherent in this reliance on "in-house" justice for acts of police corruption, especially the more serious acts. For one, it lessens whatever deterrent effect more severe sanctions might have. In fact, in an earlier study Barker found that there is an inverse relationship between risk and levels of police corruption. The higher the perceived risk, the lower the level of corruption.[10] There is also always the danger mentioned earlier that an officer can be fired from one department for serious violations of the law and be hired by another department. Lax hiring standards can lead to a few "rotten apples" moving from department to department and continuing their corrupt activities. Furthermore, because police departments operate their own criminal justice system, i.e., receiving, investigating, prosecuting, and adjudicating all complaints internally, it is possible for them to operate as a political society unto themselves without control or review by the people. It is also possible that dispensing lenient punishment for serious violations of the law by police officers will provide ammunition to those who argue that the police must be policed by some outside agency because they are unable or unwilling to police themselves.

For those patterns of police deviance defined as police misconduct, the majority of the respondents would take action in the "low" category, i.e., reprimand or suspension. The only instance where the respondents would resort to "high" severity of action is hitting handcuffed prisoners, an example of police brutality. Four percent of the respondents would press criminal charges against the officer. The reactions to police misconduct appear to indicate that even though the majority of the respondents would classify at least four of these acts as police corruption, they place them in a relatively low form of police corruption.

**Summary**

The purpose of this study was to survey police chiefs in one State and determine their opinions toward the definition and control of two forms of police occupational deviance, viz, police corruption and police misconduct.

*Table 4*

### POLICE CHIEFS' REACTIONS TO POLICE DEVIANCE GROUPED BY SEVERITY OF ACTION (SHOWN IN PERCENTAGES)

| PATTERN OF CORRUPTION | NO ACTION | LOW (Suspension & Reprimand) | MEDIUM (Resignation or Firing) | HIGH (Press Crim. Charges) | OTHER |
|---|---|---|---|---|---|
| **Corruption of Authority** | | | | | |
| Free meals | 28 | 68 | 1 | | 4 |
| Free coffee | 77 | 22 | | | 1 |
| Free movie admissions | 41 | 57 | | | 3 |
| Christmas gifts | 60 | 33 | | | 6 |
| **Kickbacks** | | | | | |
| Money from bondsmen | 24 | 57 | 17 | 1 | 2 |
| Money from lawyers | | 45 | 53 | 2 | |
| Money from wrecker drivers | | 47 | 51 | | 2 |
| **Opportunistic Thefts** | | | | | |
| Taking items from burglary | | 2 | 49 | 50 | |
| Money or items from victims | 1 | 6 | 58 | 31 | 4 |
| Taking home found property | 3 | 73 | 19 | 5 | |
| Taking lumber from construction site | | 12 | 44 | 42 | 2 |
| **Shakedowns** | | | | | |
| Money from criminals | | 3 | 60 | 37 | |
| **Protection of Illegal Activities** | | | | | |
| Money from bootlegger or prostitute | | 4 | 67 | 30 | |
| Money from drug pusher | | 5 | 67 | 29 | |
| **Traffic Fix** | | | | | |
| Money from traffic offenders | | 16 | 68 | 16 | |
| **Misdemeanor Fix** | | | | | |
| Money for dismissing case | | 16 | 68 | 16 | |
| **Felony Fix** | | | | | |
| Money for dismissing case | | 4 | 54 | 43 | |
| **Direct Criminal Activity** | | | | | |
| Committing burglaries | | 2 | 22 | 75 | 2 |
| **Internal Payoffs** | | | | | |
| Giving and/or taking money for easy work assignments | | 68 | 30 | | 2 |
| Giving and/or taking money for vacation time | 4 | 73 | 21 | | 2 |
| **Misconduct** | | | | | |
| Sleeping on duty | | 93 | 7 | | |
| Hitting handcuffed prisoners | | 56 | 35 | 4 | 5 |
| Sex on duty | | 55 | 42 | | 3 |
| Driving over speed limit on routine patrol | 4 | 90 | | | 6 |
| Personal shopping on duty | 28 | 70 | | | 2 |
| Drinking on duty | | 46 | 54 | | |

Specifically, we were interested in the existence of written rules and regulations covering the behaviors, whether the chiefs would agree with our manner of categorizing the patterns of deviant conduct, and what action, if any, the chiefs would take if they discovered members of their department engaging in the patterns of corruption or misconduct. We found that a significant number of police agencies had no formal departmental rules and regulations, and of those with rules and regulations, most departments did not specifically mention the patterns of police deviance we outlined. In fairness to the police agencies, we believe that the wording of the question could have functioned to keep the "yes" responses low. Had we substituted the word "cover" for "specifically" in our question, "Departmental written rules and regulations cover this behavior?" instead of "Departmental written rules and regulations *specifically* address or mention this behavior?" the number of departments responding that they had rules and regulations covering the behavior might have been higher. It is also possible that a rewording of the question may have produced higher responses because the chiefs would have dealt with the patterns of deviance under the vague catch-all regulation found in many departments, i.e., conduct unbecoming a police officer. If this is so, we would have gained no additional knowledge about the disciplinary handling of police corruption and misconduct through a rewording of the question. In any event, this is an empirical question which deserves further research.

The results also indicated a general agreement between the authors and the police chiefs over what behaviors constitute police corruption. The most notable exceptions were the police chiefs' classification of behaviors as corruption which are not generally treated as such by most writers on the subject, viz, sleeping, sex, and drinking on duty and hitting a handcuffed prisoner. There appears to be a general consensus in the literature on the subject that there must be some material gain involved before the act qualifies as police corruption. It appears that this group of respondents is not differentiating between "wrongness" and police corruption. They would define any behavior which they believe "wrong" or unprofessional as corrupt. There is some support for this notion from prior research on the topic. Future studies should attempt to discover exactly a standard or standards police administrators would use to define police corruption.

**". . . total reliance on departmental action for criminal violations leads to a small group of deviant actors moving from department to department, and . . . contributes to the scandal-reform-scandal syndrome observed in many police organizations."**

In our opinion, the most interesting results of our study occur in the manner in which the chiefs would react to police corruption and misconduct. In all but one of the examples, the majority of the chiefs would handle police corruption through in-house or departmental action. The exception was for a police officer committing burglaries, but even here, 25 percent of the chiefs surveyed would handle this criminal act in-house. One can think of several reasons why a chief may opt for departmental action in many cases. In-house disciplinary action is easier to administer and does not require the standard of proof necessary for court proceedings. Departmental action can also function to keep the activities secret or keep the "lid on" a serious problem. This manner of handling errant and criminal police officers may actually contribute to corruption, because it lessens the deterrent effect of more severe punishment and it contributes to a case-by-case or individual-by-individual approach to corruption control when the problem may be widespread throughout the system or organization. We also believe that total reliance on departmental action for criminal violations leads to a small group of deviant actors moving from department to department, and it also contributes to the scandal-reform-scandal syndrome observed in many police organizations.

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**Footnotes**

[1] See T. Barker, "Peer Group Support for Police Occupational Deviance," *Criminology*, vol. 13, No. 3, pp. 353–366; T. Barker, "Social Definitions of Police Corruption: The Case of South City," *Criminal Justice Review*, vol. 2, No. 2, pp. 101–110; T. Barker, "An Empirical Study of Police Deviance Other Than Corruption," *Journal of Police Science and Administration*, vol. 6, No. 3, pp. 264–272; W. J. Chambliss, *On the Take: From Petty Crooks to Presidents* (Bloomington, Ind.: Indiana University Press, 1978); J. E. Fishman, *Measuring Police Corruption*, The John Jay Press, Criminal Justice Center Monograph No. 10, New York, 1978; J. C. Meyer, *Complaints of Police Corruption: An Analysis*, The John Jay Press, Criminal Justice Center Monograph No. 9, New York, 1977; A. J. Reiss, *The Police and the Public* (New Haven, Conn.: Yale University Press); J. Rubinstein, *City Police* (New York: Farrar, Straus and Giroux, 1973); L. W. Sherman, *Scandal and Reform: Controlling Police Corruption* (Berkeley, Calif.: University of California Press, 1978).

[2] W. P. McCarthy, *A Police Administrator Looks at Corruption*, The John Jay Press, Criminal Justice Center Monograph No. 5, New York, 1977.

[3] H. Goldstein, *Police Corruption: A Perspective On Its Nature and Control* (Washington, D.C.: Police Foundation, 1975); P. Murphy, "Police Corruption," *Police Chief*, vol. 40, No. 12, pp. 36 et seq; R. Ward, "Police Corruption: An Overview," *Police Journal*, vol. 48, No. 1, pp. 52–54; R. Ward and R. J. McCormack, *An Anti-Corruption Manual For Administrators in Law Enforcement* (New York: The John Jay Press, 1979).

[4] Barker, *Criminology*; Barker, *Journal of Police Science and Administration*.

[5] T. Barker and J. B. Roebuck, *An Empirical Typology of Police Corruption* (Springfield, Ill.: Charles C. Thomas, 1973); Barker, *Criminology*.

[6] Barker, *Criminal Justice Review*.

[7] Barker, *Journal of Police Science and Administration*.

[8] Barker and Roebuck, *supra*.

[9] T. Barker, "Peer Group Support For Occupational Deviance in Police Agencies" (Ph.D. dissertation, Mississippi State University, 1976).

[10] Ibid.

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# A Message on Ballistic Protection

BY
DAVID W. PISENTI
*Special Agent*
*Firearms Training Unit*
*FBI Academy*
*Quantico, Va.*

Since the 1960's, the ballistic protective undergarment (BPU) has been available to the law enforcement community. This soft body armor, as BPU's are otherwise known, has been responsible for saving the lives of many police officers. With this extensive exposure and the fact that numerous reports attribute lives saved to BPU's, why don't officers wear body armor on a daily basis? More seriously, why isn't the armor worn by officers on planned raids or when the use of firearms can be expected?

These questions can be better answered after discussing the factors that play an important role in the purchase of BPU's and the attitudes surrounding an officer's decision to wear a vest.

In the early 1970's, the National Institute of Justice of the Law Enforcement Assistance Administration sponsored a body armor wearability program with selected police departments. The institute distributed 5,000 ballistic protective undergarments to 15 police departments across the Nation. For 1 year, officers from the selected departments were to wear the vests "on the street" to determine opinions on wearability. Each vest was constructed of seven plies of Kevlar, a DuPont-developed arimid fiber, and weighed approximately 1½ pounds, affording minimum ballistic protection.

At periodic intervals during the test period, each officer completed a questionnaire designed to canvass his findings. After the evaluations were submitted and computations made, the majority of officers favored wearing the armor continuously.

In 1977, after the National Institute of Justice published technical reports on BPU's, numerous body armor manufacturers escalated their assembly lines to provide the law enforcement community with the much sought after ballistic protective undergarments.

Initially, police officers purchased these vests on an individual basis, followed by numerous department procurements. Some officers, because of resources and lack of research findings, were compelled to purchase a vest from a local supplier, without the opportunity to compare price and protection level against quality. Some individuals and departments were attracted to the seven-ply vest (the "undershirt" model providing minimum ballistic protection) because of ever-present budgetary constraints.

However, before long, both the police officer and his department realized it was imperative for an officer's BPU to protect him against his own service weapon, which in many cases is a .357 magnum. This required the weight of the BPU to be more than tripled, from a 1½-pound undershirt to a 4- to 4½-pound magnum protector.

*Special Agent Pisenti*

Almost immediately, after wearing the new vest for a day or two, officers began to complain about the annoying heat and weight of this garment which might someday save their lives. In many cases, if not a departmental requirement, the vest was removed and thrown in the trunk of a car, never to be worn again.

## The Ins and Outs of BPU's

To provide the necessary concealability, the BPU is usually attached to the torso by elastic straps and velcro fasteners, which tend to constrict the upper muscle groups and hinder easy breathing. This slight feeling of discomfort can be misconstrued as weight. Repeated wearing can alleviate this problem in much the same way as a person becomes accustomed to changes in seasonal wearing apparel. Therefore, the more important problem must be the amount of heat retention the vest forces on the body, resulting in an excessive amount of perspiration and subsequent discomfort.

The objective, then, would be to obtain BPU's which are as cool and comfortable as possible, although no vest will provide the ultimate of these two conditions. It is also important to consider other factors—factors which could save an officer's life.

The first area of concern is coverage or the extent of body protection against ballistic threats. A number of officers have, in the past, been mortally wounded in the side because the vest did not provide wraparound protection. Since officers are forced, in many cases, to enter dwellings or approach vehicles with the side of their body completely exposed, wraparound protection is a must. Approximately 600 square inches of upper torso coverage (depending on the size of the vest) is desirable.

BPU's can be obtained with either a round neckline or V-neck. The type obtained would depend on the design of an officer's uniform. If the officer wears a uniform with a tie on a regular basis, a round neckline is desirable; those wearing an open collar may find the V-neck more concealable. However, with the V-neck, an officer sacrifices some ballistic protection.

When properly sized, the bottom of the vest should ride approximately an inch above an officer's belt line, when in the standing position. This will provide enough room for the vest to compress when the wearer sits down.

The outside carrier should be constructed of white cotton/polyester for maximum comfort. The color white is a "tropical color" that reflects the light rays of the sun; cotton/polyester, being basic undershirt material, adds to the comfort. A white carrier also affords concealability if the officer wears dress or uniform shirts that would allow a dark-colored carrier to be seen through the fabric. Shirttails on the carrier prevent the armor from shifting on the torso as body positions change.

Because more than 90 percent of shootings of law enforcement officers occur from the front, maximum protection should be afforded from frontal attacks. For complete wraparound protection, the ballistic material should overlap on the side of the torso. However, the overlap tends to create a vulnerable zone should a bullet strike at an angle of zero obliquity at that point. Therefore, the overlap should face the rear of the body.

**". . . BPU's are designed for situations when a shooting is least expected."**

There are also carriers constructed of nylon on the market. Nylon improves the carrier's durability, making it last longer, and if properly sealed, protects the Kevlar from moisture. However, the use of nylon increases tremendously the amount of heat retention in the body. In most cases, a nylon vest will be hot and uncomfortable.

Kevlar is, in fact, the heart of a BPU and must be protected from moisture impregnation. Water, either from a heavy rain or from excessive perspiration, when allowed to saturate the Kevlar, will ultimately lubricate an impacting bullet, permitting it to pass through the armor. Various concepts have been explored to prevent moisture from entering the Kevlar material. Several manufacturers are using the previously mentioned nylon carriers. Some companies enclose the ballistic fabric in some type of water repellent bag. One concept is to treat the cloth with a water repellent solution; another is to use a petroleum byproduct, such as polyvinyl, with hermetically sealed seams. These processes can keep the Kevlar dry, provided a separation doesn't occur in a seam or the bag itself breaks. A prospective buyer must realize that any covering constructed of a vinyl-type material will create an increase in the body perspiration rate.

A more desirable solution is to have a professional processor treat the Kevlar itself with a water repellent process, thereby eliminating the need for any bag or protective covering. However, this treatment to a small degree will increase the rigidity of the Kevlar, but not enough to seriously hamper comfort.

Several layers or plies of Kevlar must be put together in order to protect the wearer. If these plies are allowed to be placed one on top of another without being attached, "bunching" will occur after a bullet's impact. If multiple impacts are made on the armor, a subsequent shot may hit over an unprotected area of the torso. Consequently, it becomes mandatory to affix the plies together by stitching. One method is to run a double stitch around the outer periphery of the ballistic panel. This procedure does hold the panel together, but also reduces the flexibility of the garment. A bar-tacking system of attaching the plies together is very acceptable, inasmuch as it keeps the panel intact as well as provides the necessary pliability to maximize comfort.

With a vest permeated with a water repellent and tacked with proper stitching, it can become extremely wet and still provide the maximum ballistic protection specified on the manufacturer's label.

The U.S. Army Natick Research and Development Command in Natick, Mass., uses excellent test equipment for wearability evaluations. One machine is called the "copper man," which is actually a copper mannequin containing sensitive electronic equipment to measure the amount of heat released from the body.

Another machine, the anatomical load distribution analyzer, is capable of measuring pressure. Inside a vest are distributed 250 tiny sensors which display pressures placed on them through three colored lights located on a viewing screen. The red light indicates 1½ pounds of pressure; the yellow light, 1 pound; the green light, ½ pound. During testing, an individual dons this vest with the BPU to be evaluated placed over the top. By maneuvering through a variety of body positions, e.g., standing, sitting, twisting, and turning, the comfort and wearability of the BPU can be measured and compared with other similar products. Testing is conducted to establish a fabrication process which will result in the least amount of pressure applied by the vest on any part of the torso. This could be evidenced by fewer red lights and more green lights.

Using the above testing procedures to evaluate a variety of armor, it was determined that a Zepel-D-treated Kevlar with a cotton/polyester carrier was the most comfortable and created the least body perspiration.

## Conclusion

Realistically, no armor on the market today will provide as much comfort as not wearing a vest at all. By realizing that a BPU will only stop bullets if it is worn and that no law enforcement officer can predict whether he is going to be a target during a workday, an officer must make his own decision whether to wear a vest. However, he should consider the fact that BPU's are designed for situations when a shooting is least expected. Remember: "The life you save may be your own." Only you can make the decision! **FBI**

Operations

# Abortion

## A Police Response

By
COL. G. H. KLEINKNECHT
*Superintendent*
and
MAJ. GERALD O. MIZELL
*Director*
*Bureau of Uniform Patrol*
*St. Louis County Police Department*
*St. Louis, Mo.*

Right to Life
Care not KILL

### Issue/Activists

When the Supreme Court ruled in January 1973, that abortions could be legally obtained in the United States with limited restrictions, an emotion-laden line was drawn between proponents and opponents of the Court's decision. It was inevitable, considering the history of this issue, that protest would grow around this decision. Police administrators would be faced with protecting the rights of all parties involved while maintaining law and order.

Opponents of the abortion decision, referred to as "pro-life" or "right-to-life" groups, believe abortion is murder, conception should lead to birth in all cases, the fetus is a human life with rights under the law, and a national policy in the form of a constitutional amendment is needed to protect the unborn fetus.[1]

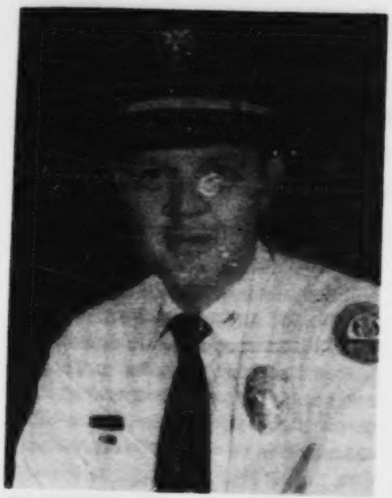
In the absence of such a national policy, pro-life advocates consider it their moral duty to protect the threatened unborn through acts of civil disobedience. They view their acts as consistent with citizens who protest immoral wars or segregation statutes. They believe their acts are justified in protesting the systematic destruction of the most vulnerable of human species—the unborn child. Acts of trespassing or failure to obey a lawful order of a police officer seem insignificant to individuals convinced they are accountable to a higher order than the State.[2]

Proponents of the Court's decision, in favor of freedom of choice, have a troubling dilemma. They may have supported the civil disobedience of civil rights and antiwar groups, but resent any State interference with the constitutional rights of women to choose abortion freely. The "freedom-of-choice" group believes all children born should be wanted, individual circumstances and conscience should dictate the decision, abortion is a personal matter outside the State's purview, and human life does not begin with conception. Hence, abortion is not murder, but a medical procedure.[3]

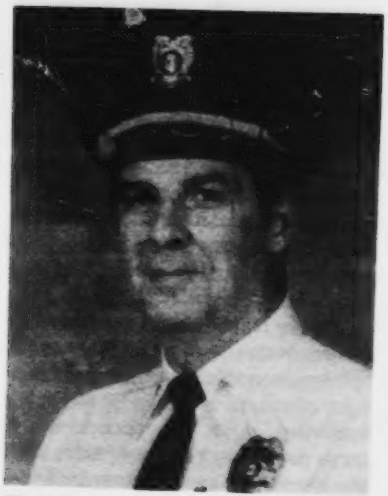
As these two groups struggle to defend what each considers an "inalienable right" (freedom of speech, freedom of assembly, freedom to obey their moral dictates), the police administrator must establish a position upon which these constitutional guarantees can be protected without abuse of others or unlawful acts. It is a mistake for police personnel, whether managers or officers, to ally themselves with either position.

### Escalation of Tactics

Following the pattern of earlier antiwar and civil rights activists, pro-life groups in the St. Louis metropolitan area have experienced frustration in



Colonel Kleinknecht



Major Mizell

recent years over unrealized goals. This has led to an escalation of tactics. Citizens who had been content to walk informational picket lines, hand out literature, and bring their views to the media through traditional methods found themselves trespassing on private property and ignoring the instructions of the police. What began as peaceful, lawful acts turned into confrontations and unlawful behavior requiring the attention and resources of the St. Louis County Police Department.

While police personnel were capable of responding to the assaults, trespassing, etc., of greater concern was the potential violence inherent in a large crowd, complete with leaders and a high emotional quotient. No matter how peacefully assembled or important the issues, even well-meaning, law-abiding citizens can become unpredictable when part of a crowd.

**Police Response**

The first abortion clinic in the St. Louis area opened in the City of St. Louis immediately following the U.S. Supreme Court decision of 1973. Opponents of this decision focused their resources and efforts at this clinic until the owners obtained a restraining order from the court. The pro-life group then moved its operation several miles to the unincorporated area of St. Louis County. The group did not change strategies, but simply crossed jurisdictional lines and continued their protest. When the number of arrested persons mounted to over 100, the group moved their protest to University City and eventually to the City of Bridgeton.

At each of these clinics, the pro-life members began their protest by peacefully demonstrating outside the building. Next, they entered the building without the owner's consent, refused to leave when requested to do so, and blocked entrances and exits. At the clinic in unincorporated St. Louis County, this action continued each Saturday for nearly 4 months. On anniversary dates significant to the pro-life group, the crowd would number nearly 200 persons. The size of the group was dependent on weather conditions and the response by the freedom-to-choice group.

Unlike the majority of police responses, the ongoing activities of pro-life members permitted advance coordination of police resources and tactics. The time was used to plan an ongoing response which would enforce county ordinances and State statutes without a threat to life and property. At the same time, demonstrators were able to exercise their rights.

While there may be alternative police responses which would achieve the same objectives, the police administrator should begin by:

1) Meeting with the building owners and tenants,

2) Studying the physical layout of the demonstration site,

3) Planning deployment of patrol personnel,

4) Learning the identity and method of operation of the leaders,

5) Providing instructions for onsite supervisors,

6) Monitoring the police response on a daily basis, and

7) Seeking legal advice and instruction from legal counsel representing the police agency.

The owner of the building should be contacted in person to assure police protection will be given the facility,

**"Owners and employees of the adjacent businesses, as well as the abortion facility, should have their legal rights explained and should be told what the police can or cannot do in each circumstance."**

and every effort made to prevent normal business operations from being disrupted. It is the owner's responsibility to post signs in the exterior areas indicating that only patients and others with appointments have the legal right to enter the building, parking lot, or property. These signs should be in a conspicuous area and of sufficient size to strengthen a trespassing arrest.

The owner or agent of the abortion clinic (employee, tenant, or tenant's employee) should be instructed to use the same wording when warning trespassers. This will lessen the chance of confusion in court testimony as to what the trespassers were told. The owner or his agent should *ask the patient* trying to enter the clinic, "Do you want to enter this office?" If the answer is in the affirmative, the owner or his agent should tell the trespasser that he is blocking the entrance and ask him to move. If the trespasser does not comply with the request, the police officer should repeat the above and add that he will have to arrest the person for trespassing and failure to obey a lawful order of a police officer, if he does not clear the entrance so that the patient may enter. It is the responsibility of the owner to lend support in the prosecution of all arrested persons.

In addition, personal contact should be made with adjacent businesses. The importance of notifying the police of assembling demonstrators in advance should be stressed. Contacts should be renewed over the weeks and/or months to monitor any problems before they become critical. Owners and employees of the adjacent businesses, as well as the abortion facility, should have their legal rights explained and should be told what the police can or cannot do in each circumstance.

It is important for police personnel to identify the leadership of the group. This can be accomplished by personal contacts at the protest site or reviewing newspapers, especially those published by religious groups. Newspapers can possibly alert the police to key dates and planned demonstrations.[4]

Communication with the leaders of these groups will be beneficial in the exchange of information. You should explain the police department's position that as long as the demonstrators refrain from unlawful acts, their rights to demonstrate peacefully will be protected. If an unlawful act is observed, the police will do their job—arrest the violator.

Police personnel can also seek the cooperation of group leaders in identifying those people within the group who can be relied on to manage or control the group should the need arise. Recommend to the leaders that these marshals should wear some type of identification and should be trained to intervene if they observe other members becoming abusive or violating any preagreements. These marshals should be able to relay police instructions in a nonthreatening manner to the rest of the group.

## Police Personnel

After the police commander has visited the demonstration site and determined how and in what numbers police personnel will be deployed, he should next review the legal issues with his personnel. This should include what constitutes assault, trespassing, and failure to comply with a lawful order.

The police commander should stress the importance of a neutral application of these laws. Personal feelings on the issue have no place in the police response. In some police departments, the assignments may have to be voluntary due to the religious reservations of some officers. In addition, police officers should be instructed to refrain from any response to inflammatory verbal taunts.

## Effecting the Arrest

While the number of officers in the detail depends on the circumstances, one lieutenant, a sergeant, and eight police officers were assigned to cover the demonstrations in St. Louis County. One police officer took up a position *inside* the abortion clinic to insure the safety of the patients; the other officers were stationed at the front and rear entrances.

When illegal action was taken by demonstrators, they were first warned by the owner, his agent, or clinic manager/employee and then by the police lieutenant. After an opportunity to leave peacefully had been exhausted, the officer chosen beforehand to make arrests would inform the individuals they were under arrest and read them their rights. It is important to designate *one* officer to make all arrests and prepare the police incident reports. This procedure proved useful in prosecuting the arrests, since only the lieutenant and arresting officer were required to testify. Other officers were designated carriers to remove the arrestees to prisoner conveyance vans.

To facilitate the large number of arrests, it was necessary to have at the demonstration site prisoner conveyance vehicles, plastic handcuffs, booking equipment, and photographic equipment. When the arrested demonstrators reached the prisoner conveyance van, each arrestee was photographed with an identification placard containing name, date, time, and complaint number, along with the arresting officer. Since there were several arrests, sometimes involving the same persons but on different dates, the photographs were available to refresh the officer's memory of the incidents and facts.

Officers assigned to this detail should not display their support of or opposition to any of the individuals participating in the demonstration. Arrestees detained in the prisoner conveyance vans should not be left for a prolonged period of time. This is especially important during summer months in order to avoid charges of inhumane treatment. Likewise, night sticks should be displayed only when necessary.

The influence the leaders have over the group should not be overlooked. Rather than challenging it, the police commander should use the leader's influence to manage the situation.

## Legal Issues

St. Louis County views the arrests made during these demonstrations as simple trespass cases. Those arrested were knowingly present on the property of another and refused to leave when asked to do so by both the owner or his representative and by the police.

From the defendants' perspective, the cases involve violation of a minor law to achieve a greater good, i.e., the saving of human lives. This reasoning—that a crime under certain conditions is not a criminal act if it is committed to prevent injury—is termed "the defense of justification." This defense requires the court to rule, based on the evidence, whether the facts and circumstances do, in fact, constitute justification as set out in the Missouri Revised Statute (MoRS) 563.026.[5] To prove to the court the applicability of this defense, the defendants planned on introducing medical testimony as to when life begins and to show gory photographs of an aborted fetus.

When the county prosecuting attorney learned the strategy to be used by the pro-life defendants, a pretrial motion was filed in an attempt to limit evidence to the issue of trespassing. The motion has the purpose of excluding testimony which the county viewed as inflammatory, prejudicial, and irrelevant to a charge of trespassing.

## Court Response to Date

Municipal courts in St. Louis County to date have yet to levy any fines or sentences in the more than 400 arrests made in the City of Bridgeton or University City. Many cases in St. Louis County have yet to be decided. But, whatever the outcome, as in so many other ironies in police work, the police must continue to enforce the law guaranteeing the rights of all parties involved. The morale problems caused in some police departments using scarce manhours to arrest and rearrest the same protestors should not be overlooked by the police administrator.

While the police officer may have little interest in performing duties perceived as having little to do with crime, protecting the legal rights of all persons involved in an incident should be stressed by all police administrators.

## Summary

The St. Louis County Police Department achieved its objectives—several hundred emotional demonstrators were handled over a lengthy period of time without major injury to anyone. Laws were enforced with a minimum degree of disruption to the clinic and adjacent businesses, while demonstrators were able to exercise their constitutional rights of speech, assembly, and religion. This is a credit to law enforcement professionals called upon to maintain order in an environment often in turmoil. **FBI**

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**Footnotes**

[1] Aryeh Neier, "Theology and the Constitution," *The Nation,* December 30, 1978, p. 726.

[2] Roger M. Williams, "The Power of Fetal Politics," *Saturday Review,* June 9, 1979, p. 14.

[3] Andrew Hacker, "Of Two Minds About Abortion," *Harpers,* September 1979, pp. 16–19.

[4] Police administrators faced with ongoing demonstrations in their jurisdiction should watch precipitating legislative-judicial actions at the national level. For example, pro-life advocates have become more active and recruited members in response to new legislation, such as the Hyde Amendment or the class action suit denying federally funded abortions for indigent patients. U.S. Supreme Court and State supreme court reviews can revive an issue which has become nearly dormant at the local level.

[5] MoRS 563.026 justification (generally). Unless inconsistent with other provisions of this chapter defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute any crime other than a class A felony or murder is justifiable and not criminal when it is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no fault of the actor, and which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability of avoiding the injury outweighs the desirability of avoiding the injury sought to be prevented by the statute defining the crime charged.

The necessity and justifiability of conduct under subsection 1 may not rest upon consideration pertaining only to the morality and advisability of the statute, either in its general application or with respect to its application to a particular class of cases arising thereunder. Whenever evidence relating to the defense of justification under this section is offered, the court shall rule as a matter of law either the claimed facts and circumstances would, if established, constitute a justification.

The defense of justification under this section is an affirmative defense.

# MISSTATEMENTS IN AFFIDAVITS FOR WARRANTS: *FRANKS* AND ITS PROGENY

By
ROBERT L. McGUINESS
*Special Agent*
*FBI Academy*
*Legal Counsel Division*
*Federal Bureau of Investigation*
*Quantico, Va.*

*Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.*

It should come as no surprise to law enforcement officers that some of the information included in an affidavit[1] to establish probable cause for a warrant may later turn out to be incorrect. The necessary reliance on second and third hand sources for the facts and the marshaling of information under exigent circumstances make this true. How does this affect the validity of the warrant? Does it matter that the incorrect information was known to be false? Suppose it is just the result of negligence? What if the incorrect information is not essential in establishing probable cause? Does it make any difference if the fault lies with you as the affiant rather than with someone else who has provided the information? Does the defense have a right to test each of the statements in an affidavit in order to determine its accuracy? This article addresses these questions.

### Early Background

In fourth amendment[2] search and seizure law, the Supreme Court made it clear as early as 1933 that simply because officers act pursuant to a warrant does not insulate evidence seized thereby from being suppressed if the facts presented to the magistrate are deemed insufficient by a reviewing court to establish probable cause. Thus, in *Nathanson* v. *United States,*[3] where the officer's affidavit merely stated his belief that goods subject to seizure were located at the premises of Nathanson, without reciting facts to support such belief, the Supreme Court held that the warrant was not issued upon probable cause. The warrant therefore was declared invalid, and the evidence seized under it suppressed.

The principle that a warrant can be challenged after its issuance was later relied upon by the Court to invalidate arrest warrants[4] as well as search warrants. After *Mapp* v. *Ohio*[5] made the Exclusionary Rule of the fourth amendment applicable to the States, it was similarly relied upon to strike down warrants in State cases.[6] In each of the Supreme Court cases dealing with this issue, the party challenging the affidavit contended that it was insufficient on its face to support a finding of probable cause. In none of the cases was the affidavit attacked on the basis that its statements were not accurate.

It might be said that prior to the Supreme Court's initial analysis of this subject in the 1964 case of *Rugendorf* v. *United States,*[7] there were few cases, State or Federal, stating that the fourth amendment permitted a challenge to the accuracy of statements in an affidavit.[8] The rationale of the courts was that the truthfulness of the allegations in the affidavit had already been considered by the magistrate and that allowing the defendant to contest such before the trial judge would denigrate the role of the magistrate, causing him not to exercise the high degree of responsibility called for in reviewing affidavits.[9] Moreover, it was argued there was already an effective deterrent to an affiant intentionally furnishing false information—he could be prosecuted for perjury.[10]

### *Rugendorf* v. *United States*

In *Rugendorf* v. *United States,*[11] the defendant challenged the accuracy of two statements in a search warrant affidavit. One alleged that the defendant was the manager of a meat market; the other that he was involved with his brother in the meat business. The affiant, a Special Agent of the FBI, had no personal knowledge of these facts. The information came from a fellow Agent who, in turn, derived the first item of information from a police officer and the second item from a confidential informant. In finding the affidavit sufficient to establish probable cause for the search, the Court stated that even "assuming, for purposes of this decision, that such attack may be made" on the affidavit, the factual inaccuracies alleged "were of only peripheral relevancy to the showing of probable cause, and, not being within the personal knowledge of the affiant, did not go to the integrity of the affidavit."[12] The Court thus held that inaccu-

*Special Agent McGuiness*

rate information in an affidavit which is not necessary to a finding of probable cause and which does not impinge upon the integrity of the affiant will not cause a warrant to be invalidated. Of course, *Rugendorf* left unanswered most questions concerning the testing of affidavits.

Following the *Rugendorf* decision, the stone cracked on which this principle of "no challenge" had been etched. The Supreme Court's intimation in *Rugendorf* that an affidavit's accuracy can be challenged was the catalyst for bringing this question before the lower courts. By 1978, approximately 21 States permitted a testing of the affidavit for veracity, as did 10 of the 11 Federal circuit courts of appeals.[13] However, there was a wide variance among the States and among the Federal appellate courts as to what type of initial showing of falsehood was necessary to trigger a hearing on the issue and what type of misstatement would cause the warrant to be declared invalid.[14] This was not surprising, considering the types of mistakes that can develop.

A mistake in an affidavit consists of three components: (1) How the mistake was made—deliberately (or with a reckless disregard for the truth), negligently, or innocently through no one's fault; (2) the significance or degree of the mistake—whether material or immaterial to a finding of probable cause; and (3) the person responsible for the mistake—the affiant (or government source), confidential informant, or a third person (victim, witness, or other private citizen). (See chart 1.) The result of this analysis is that 18 different combinations of mistakes can be put together. Conceivably, there could have been a Supreme Court decision considering each. However, the Court accepted a case in 1978 which was to resolve all of these questions in one decision. Moreover, the court addressed itself to the precise question of what type of factual showing by the defendant was necessary to initiate a hearing concerning the alleged misstatements.

***CHART 1***

**Categorizing Mistakes**

| HOW MADE | DEGREE | MAKER |
|---|---|---|
| 1) Deliberate or made with a reckless disregard for the truth | 1) Material | 1) Affiant—Government Source |
| 2) Negligent | 2) Immaterial | 2) Confidential Informant |
| 3) Innocent—Unavoidable | | 3) Witness or Victim |

**". . . the Supreme Court made it clear as early as 1933 that simply because officers act pursuant to a warrant does not insulate evidence seized thereby from being suppressed. . . ."**

## The *Franks* v. *Delaware* Case (1978)

The factual setting of *Franks* v. *Delaware*[15] was as follows. A woman was raped in her home by an individual who broke in and accosted her at knife point. She gave a physical description of her assailant and described his clothing as consisting of a white thermal undershirt, brown leather jacket, and dark knit cap. The defendant was developed as a suspect, and a search warrant was sought in order to search his apartment for the clothing worn and the knife used in the rape. Part of the probable cause for the search was a statement in the affidavit that the affiants (two city detectives) had contacted the defendant's supervisors at his place of employment, who stated that the defendant's usual attire consisted of a white thermal undershirt, brown leather jacket, and dark knit cap. The description of the assailant's clothing thus matched that given by the rape victim. The warrant was issued, and the evidence seized.

The defendant sought suppression of the evidence on grounds that the aforementioned statement of the supervisors was not true. The defendant alleged that the affiants had never talked to the supervisors as stated in the affidavit, and while the supervisors may have been contacted by a police officer, the information they furnished was "somewhat different" from what was stated in the affidavit. At the suppression hearing, the defendant's counsel sought to call the detectives and supervisors as witnesses on this point. The trial court refused this request and denied defendant's motion to suppress on the basis that Delaware law did not permit a challenge to the veracity of a warrant affidavit at a suppression hearing. The court explained that challenges in Delaware were limited to questions of the sufficiency of the affidavit on its face. The Supreme Court of Delaware ultimately upheld the trial judge's ruling, finding Delaware's rule not to be in violation of the fourth amendment of the U.S. Constitution.[16] The defendant sought and was granted review of his case by the U.S. Supreme Court.

The State of Delaware made several persuasive arguments as to why an affidavit for a search warrant should be beyond attack as to its underlying accuracy.

1) Extension of the Exclusionary Rule to this situation would exact too great a price from society. The Supreme Court responded by saying that a flat ban on exclusion would denude the fourth amendment's probable cause requirement of all meaning.

2) Application of the Exclusionary Rule would overlap existing penalties of perjury and contempt for filing false affidavits. The Court answered that sanctions for perjury are unrealistic, since the district attorney is not going to prosecute that which he may have ordered.

3) Magistrates are equipped to conduct a rigorous inquiry into the truth of an affidavit and a further testing is unnecessary. The Supreme Court disputed this contention, stating that an *ex parte* hearing is not likely to be that rigorous since the magistrate has no information that may contradict that of the affiant.

4) Allowing such a challenge would denigrate the magistrate's function, causing him to be less stringent in his determination. The Court replied that since the affidavit can already be challenged for sufficiency, it did not believe a challenge for truthfulness would in any way diminish the importance of a magistrate's function.

5) Allowing the challenge would confuse, delay, and divert attention from the resolution of the main issue in the case, the guilt or innocence of the accused; the challenge also would be used by the defense as a means of discovery and identification of informants. The Court answered that the rule fashioned by *Franks* would protect against baseless challenges generated simply by a desire for discovery or to learn the identity of informants.

6) To a great extent, accuracy is beyond the ability of the affiant to insure, since facts in an affidavit may come from many different sources. The Court agreed with this contention and indicated that the rule announced would pertain only to the affiant's truthfulness.

Having addressed the State's arguments, the Court moved to a discussion of the rule established by the decision. The Court declared that the wording of the fourth amendment itself suggests the correct resolution of this issue. By stating that probable cause must be supported by oath or affirmation, the fourth amendment necessarily implies that there will be a truthful showing of probable cause. Not truthful in the sense that each statement in the affidavit necessarily will be accurate and correct, since probable cause appropriately may be based upon hearsay and hastily garnered facts, but truthful in the sense that each statement is believed or accepted by the

***CHART 2***

**Warrant-nullifying Mistake**

| HOW MADE | DEGREE | MAKER |
|---|---|---|
| 1) Deliberate or made with a reckless disregard for the truth | 1) Material | 1) Affiant—Government Source |

affiant as true. The Court recognized though the onerous task of proving or defending each statement in an affidavit. Therefore, it held that in order to mount a challenge to the affiant's truthfulness, the defendant must offer proof, (such as statements from witnesses) that the affiant lied or acted with a reckless disregard for the truth with respect to specific statements in the affidavit, and the court to which the challenge is made must determine that such alleged misstatements are material to the establishment of probable cause. If these conditions are met, a hearing must ensue, at which the defendant has the burden of proving by a preponderance of the evidence that the affiant lied or acted with a reckless disregard for the truth. If this is proven, and by omitting the false material, the affidavit's remaining content is insufficient to establish probable cause, the warrant must be invalidated, and the fruits of the search suppressed.

Thus, the Court held that only one type of mistake, that represented by a combination of type 1 factors from the three columns in chart 1, is sufficient to mandate a hearing, and if proven, cause the warrant to be voided. (See chart 2.)

The *Franks* decision seems to reflect a fair compromise between the obligation of truthfulness on the part of law enforcement officers in establishing probable cause and the legitimate concern of the Government to avoid the litigation of groundless issues and the suppression of relevant evidence where the officer is not responsible for a material distortion of the truth.

### Situations Inviting Mistakes

It is not difficult to conceive of good faith mistakes being made by an officer in the course of assembling facts for a warrant. Affidavits for warrants are frequently prepared in haste and under trying and exigent circumstances, thus inviting errors.[17] The sheer complexity and length of an affidavit may encourage errors. Even the most routine investigation contains the seeds for inaccuracies where the information is obtained second, third, and fourth hand. A few post-*Franks* decisions are illustrative.

In *United States* v. *Crowell*,[18] an officer seeking a search warrant for the defendant's home stated in his affidavit that phencyclidine (PCP) (a controlled substance) was found in the defendant's trash in the form of white crystals. Actually, it was in the form of brown flakes. The court rejected the attack on the validity of the warrant, stating that the discrepancy "appears innocent and a result of simple carelessness. . . ."[19]

In *United States* v. *Tasto*,[20] the facts showed that the defendant had in his home three of the chemicals necessary for the manufacture of PCP. The officer mistakenly averred in his affidavit that if one other chemical were added, PCP could be produced. In fact, three more chemicals were required. The court found that the defendant had not met the burden of establishing that the misstatement was deliberate or reckless and that having observed a significant number of the ingredients necessary for the production of PCP at the house, probable cause was nevertheless established.

*United States* v. *Young Buffalo*[21] illustrates how the sheer volume of material in an investigation can raise the question of error when attempting to synthesize it. The case is also helpful in that it addresses the question of an officer's responsibility to check out facts in his possession. In *Young Buffalo*, the officer, in his affidavit for a search warrant, gave a composite physical description of a bank robber from each of several robberies under investigation, in an attempt to show that it fit the physical description of defendant. The defendant contended that the "composite descriptions" were not consistent with the descriptions actually given by the witnesses and the affiant sought to mislead the magistrate by this tactic. The affiant also averred that the defendant owned a motorcycle fitting the description of that used in one of the robberies and had rented a white-over-maroon vehicle matching the description of one used in another robbery. The defendant alleged that he did not own the motorcycle at the time of the robbery in question (apparently because it was destroyed in an accident), and routine checking by the affiant would have revealed this. Furthermore, he stated the rented vehicle was actually maroon-over-white.

**". . . a defendant has no right under the Due Process Clause of the 14th amendment to routinely demand the identity of a Government informer at a suppression hearing on the issue of probable cause to arrest."**

With respect to the alleged incorrect composites, the appellate court recognized that the affiant was required to sift through a large amount of information from seven robberies in order to synthesize descriptions of the robber. Considering this, the trial judge's determination that the variances were minor and that the affiant had not lied or acted with a reckless disregard for the truth was found not clearly erroneous. Regarding the other alleged inaccuracies, the court found that simply because the affiant learned that the motorcycle had been in an accident prior to the robbery raised no duty to inquire further as to its condition, nor was there a duty to view the rented automobile to confirm its color.

When an officer employs double and triple hearsay to establish probable cause, it is easy to understand how some statements in the affidavit may be erroneous. In *United States* v. *Edwards*,[22] an FBI Agent filed an affidavit for a search warrant. Part of the information for the affidavit came from an agent of the Drug Enforcement Administration (DEA), who acquired it from a Los Angeles police officer, who in turn received it from a customer service agent of an airline. As it was transmitted along the line, the information was slightly changed. The court stated the FBI Agent was not negligent in failing to cross-check the information, and even if he were, such negligence would not be sufficient to void the warrant.

In *United States* v. *Astroff*,[23] the affiant, a DEA agent, was found by the trial court to have been negligent in recounting information from another officer, which was material to probable cause. The DEA agent stated that a railroad police officer reported that inspection of four suitcases in a train's baggage car found them to contain marihuana. Actually, no one had looked inside the luggage. Because of the odor emanating from the suitcases, the contents were suspected of being marihuana. The court nevertheless upheld the warrant because the misstatement, rising only to the level of negligence on the agent's part, was not sufficient to nullify the warrant.

### Misstatements by Fellow Officers and Informants

While the *Franks* decision is a model of clarity, there are a few questions which later cases have addressed and further clarified. As previously noted, the deliberate falsehood that can be challenged is that of the "affiant, not any nongovernmental source." This raises two questions. First, if a person is a government source, such as a fellow law enforcement officer, does this person stand in the place of the affiant for purposes of the *Franks* test?

In *United States* v. *Cortina*,[24] a Federal appellate court impliedly answered this in the affirmative. The court found an intentional misstatement to have been made by one officer to a fellow officer of the same agency who filed an affidavit for a search warrant. The officer-affiant had no knowledge of the misstatement, which related to whether a confidential informant had actually furnished certain information. The court treated the deliberate falsehood as though the affiant himself had made it and struck down the warrant. This notion finds support in *Franks* itself. In reviewing the *Rugendorf*[25] decision, the *Franks* Court stated that *Rugendorf* "took as its premise that police could not insulate one officer's deliberate misstatement merely by relaying it through an officer-affiant personally ignorant of its falsity."[26] However, in another post-*Franks* decision, where inaccurate information was relayed from an officer of one agency to an officer of another agency, the First Circuit Court of Appeals stated that the error should not be attributed to the affiant.[27] In this case, however, the misstatement appeared to be the result of simple negligence, not deliberateness.

The second question raised by the phrase "affiant, not any nongovernmental source" is whether a typical criminal informant should also be considered a "government source" whose falsehoods would vitiate the warrant. The Second Circuit Court of Appeals has answered this in the negative. In *United States* v. *Barnes*,[28] an informant provided information which was included in the officer's affidavit. The informant later recanted some of this information, and the defendant made a *Franks* challenge to the affidavit. The court noted that the officer-affiant was unaware that the information was false, and in rejecting the claim, held that "[a]n informant, whether paid or not, is simply not a Government 'agent' "[29] whose false representations will nullify a warrant.

### Reckless Disregard for the Truth

Another phrase requiring some clarification is "reckless disregard for the truth." The Court in *Franks did not* define it, but an appellate court had occasion to do so in *United States* v. *Davis*.[30] This decision is also instructive on the question of whether omissions of facts can trigger a *Franks* hearing. In *Davis*, the defendant contended that the failure of the affiant to describe the circumstances under which a codefendant furnished information to the Government, which information was used in an affidavit for a search warrant, manifested a reckless disregard for the truth. The circumstances alluded to were as follows: The statements of the codefendant came on the heels of an illegal arrest, promises of leniency were made in return for the information, and it was intimated that a girlfriend of the codefendant might be subject to sexual abuse if sent to a women's detention facility. The court noted that *Franks* had not defined "reckless disregard" and observed:

> "Unfortunately, the Supreme Court in *Franks* gave no guidance concerning what constitutes a reckless disregard for the truth in fourth amendment cases. . . . By way of analogy, however, we can draw upon precedents in the area of libel and the first amendment. In *St. Amant* v. *Thompson*, 390 U.S. 727 (1968), cited with approval in *Herbert* v. *Lando*, 441 U.S. 153 (1979), the Court observed that reckless disregard for the truth requires a showing that the defendant 'in fact entertained serious doubts as to the truth of his publication.' *Id.* at 731. This subjective test may be met not only by showing actual deliberation but also by demonstrating that there existed 'obvious reasons to doubt the veracity of the informant or the accuracy of his reports.' " *Id.* at 732 (alternative citations omitted).[31]

Applying this test, the court concluded that the affiant's failure to include these facts did not amount to a reckless disregard for the truth. Moreover, the court addressed the subject of whether an omission of information could result in an affidavit being challenged and voided. Its language is helpful on this point:

> "In reaching this conclusion, we are not holding that a case never could arise in which an omission would render a warrant susceptible to attack under *Franks*. Police could take a statement so out of context or could engage in conduct so overbearing and suggestive that failure to describe these factors would constitute a deliberate falsehood or a reckless disregard for the truth. Nevertheless, we cannot require officers to describe in minute detail all matters surrounding how they have obtained statements, for such a requirement would make the process of applying for a search warrant a cumbersome procedure inimical to effective law enforcement. Moreover, such a result might encourage rather than discourage improper police behavior: facing ever more stringent requirements for obtaining warrants, police might forego applying for one whenever they think they might have a tenable case for proceeding."[32]

Five other U.S. circuit courts of appeals have also concluded that an omission may cause a warrant to be quashed, but that any such omission would have to be intentional and for the purpose of deceiving the magistrate.[33] Thus, where an officer did not allege the types of cases in which the informant had supplied reliable information in the past, or how the informant concluded that what he saw was in fact narcotics, the court did not find these omissions fatal to a finding of probable cause.[34] The fact that an omission is intentional is difficult to prove. As the Fifth Circuit Court of Appeals explained:

> "Doubtless it will often be difficult for an accused to prove that an omission was made intentionally or with reckless disregard rather than negligently unless he has somehow gained independent evidence that the affiant had acted from bad motive or recklessly in conducting his investigation and making the affidavit. Nevertheless, it follows from *Franks* that the accused bears the burden of showing by a preponderance of the evidence that the omission was more than a negligent act."[35]

### Revealing the Identity of Informants

A troubling question to the law enforcement community is whether the *Franks* case causes informants to be more readily revealed as a result of challenges to affidavits. The decision itself clearly states that it does not suggest whether a trial court must ever require an informant's identity to be revealed once a showing of falsity has been made. Previously, the Supreme Court held in *McCray* v. *Illinois*[36] that a defendant has no right under the Due Process Clause of the 14th amendment to routinely demand the identity of a Government informer at a suppression hearing on the issue of probable cause to arrest. The post-*Franks* case of *United States* v. *Cortina*[37] deals with the informant's identity in a

**". . . officers should be aware that courts may require an *in camera* hearing to insure the existence of the informant and the fact that the officer has not misrepresented the informant's information."**

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*Franks* context, that is, where there is a challenge to the truthfulness of the information establishing probable cause.

A confidential informant furnished information concerning the illegal operations of two businesses. The informant's report consisted primarily of statements she overheard of persons associated with the businesses in which they disclosed certain wrongdoings. The information served as a basis for an affidavit for a search warrant seeking to search such businesses for books and records. The warrant was issued, documents were seized, and the defendants subsequently indicted. Prior to trial, the defendants sought suppression of the documents, contending they never made the statements attributed to them in the search warrant affidavit and furnishing affidavits to this effect. They asked for a *Franks* hearing to prove their contentions. The trial judge, applying principles of the *Franks* case, denied the hearing on the basis that the defendants did not make the threshold showing required by *Franks*. The defendants' offer of proof did not establish that it was the officer who lied; it just as likely could have been the informant.

Later, a determination was made by the Government that the informant would testify at the trial. Pursuant to a discovery requirement, the Government furnished to the defense the officer's statements regarding interviews with the informant. The defense noted that the information attributed to the informant in the affidavit was not reflected in such statements and again sought a *Franks* hearing. The trial judge, confronted with this new evidence tending to show that it may have been the officer who lied, granted the request. As a result of the hearing, the court found that the officer in fact lied with respect to material facts in the affidavit, and the evidence was suppressed. The ruling was affirmed on appeal.

Unlike the *Cortina* case, which denied a *Franks* hearing initially when there was no proof that it was the affiant, as opposed to the informant, who may have lied, the trial court in *United States* v. *Arrington*[38] allowed a full *Franks* hearing to resolve the question. In connection with the hearing, the court examined the officer-affiant *in camera* and was satisfied that the officer had not misstated the informant's information. The court then denied to the defense disclosure of the informant's identity and whereabouts. On appeal, the court affirmed the trial court's resolution of the matter and questioned whether a full hearing was required, since the officer's credibility had not been put directly in issue.

In *United States* v. *House*,[39] the same factual setting as in *Arrington* was present, with the defendant primarily challenging the existence of the informant. Again, a full hearing ensued. The trial court examined a sealed statement of the informant in which the name of the informant was deleted. The trial court ruled that it was satisfied from this examination that the informant existed. The defendant argued on appeal that this was not satisfactory, contending that the Government should have been required to at least identify and produce the informant for an *in camera* examination. On appeal, a Federal court found no error in the trial court's resolution of the disclosure problem.

The same situation was present in the case of *United States* v. *Brian*,[40] with the court taking an approach somewhere between *Cortina* and the *Arrington* and *House* cases. The defendants sought the production of informants and informant files in order to acquire evidence that the officer-affiant lied in the search warrant affidavit. The court recognized the difficulty of mounting a challenge to an affidavit when informant information is involved, because there is no way of establishing that it is the affiant who lied unless the informant is interviewed. The *Brian* court concluded that the proper procedure to resolve these situations is initially an *ex parte*, *in camera* interview of the affiant, and if necessary, of the informant, so that the judge may be assured that the affiant did not perjure himself in the affidavit. If the judge is so satisfied, a full *Franks* hearing need not result.

This approach was also taken by the trial court in *United States* v. *Licavoli*.[41] The defendant challenged the truthfulness of statements contained in an FBI Agent's affidavit for a search warrant, which was based on information from two confidential informants. The defendant alleged that he ascertained the identities of the informants and determined that the information they furnished to the FBI was not as stated in the affidavit. He therefore requested a *Franks* hearing to prove such. Rather than conduct a full hearing, the trial court conducted an *in camera* hearing, interviewing one of the informants and examining an affidavit of the other. The court concluded that it was satisfied that the affiant had not been guilty of any impropriety and denied a full *Franks* hearing. A Federal appeals court found nothing improper in the trial judge's handling of the matter.

## Applying *Franks* in Other Contexts

Is the *Franks* decision, a search warrant case, equally applicable to affidavits for arrest warrants and applications for electronic surveillance? The fifth circuit thought so in *United States* v. *Martin*,[42] where it applied the *Franks* analysis to the challenge of an arrest warrant. Other Federal courts have applied the *Franks* test to orders for electronic surveillance under Title III of the Omnibus Crime Control and Safe Streets Act of 1978.[43]

Two other situations are worthy of mention. In *United States* v. *DePoli*,[44] the defendant sought suppression of evidence resulting from a "mail cover" on grounds that the formal request, required by Post Office regulations, contained allegedly false information. The court denied the hearing because the alleged misstatements, even if proven false, were not material. It intimated that the *Franks* decision should not be extended to cover challenges to statements made in seeking access to information under agency regulations. Similarly, in *United States* v. *Parsons*,[45] the court suggested that the *Franks* decision should not be extended to inaccurate information presented at grand jury proceedings seeking indictments.

## Conclusion

*Franks* v. *Delaware* makes it clear that only where the defense has proof that the affiant lied or acted with a reckless disregard for the truth with respect to some material statement in the affidavit will a hearing regarding such be required. A deliberate falsehood by a nonaffiant, fellow officer may fall within the *Franks* rule, but an informant's misrepresentations will have no effect on the validity of the warrant. To be guilty of "reckless disregard for the truth," the officer must have entertained serious doubt as to the truth of the information he inserted in the affidavit. Deliberate omissions of facts bearing on probable cause will also incur the *Franks* penalty, but a defendant will have a difficult task in proving that the omission was intentional. The post-*Franks* decisions express due regard for the confidentiality of informants, but officers should be aware that courts may require an *in camera* hearing to insure the existence of the informant and the fact that the officer has not misrepresented the informant's information. **FBI**

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**Footnotes**

[1] An affidavit is merely a written statement under oath. Black's Law Dictionary 80 (Rev. 4th ed. 1968). While it is usually the case that facts supporting a warrant are reduced to writing, this is not required by the fourth amendment. *See United States* v. *Hill*, 500 F.2d 315 (5th Cir. 1974), *cert. denied*, 420 U.S. 931 (1975).

[2] U.S. Const. amend. IV reads as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

[3] *See Nathanson* v. *United States*, 290 U.S. 41 (1933).

[4] *See Giordenello* v. *United States*, 357 U.S. 480 (1958).

[5] 367 U.S. 643 (1961). The Exclusionary Rule is a term used to describe the remedy of suppressing evidence when it is seized in violation of the fourth amendment. 1 W.LaFave, Search and Seizure, sec. 1.1 (1978).

[6] *See Aguilar* v. *Texas*, 378 U.S. 108 (1964).

[7] 376 U.S. 528 (1964).

[8] *See North Carolina* v. *Wrenn*, 417 U.S. 973 (1974) (White, J., dissenting from denial of certiorari). Kipperman, *Inaccurate Search Warrant Affidavits As A Ground For Suppressing Evidence*, 84 Harv. L. Rev. 825 (1971).

[9] Note, *Testing The Factual Basis For A Search Warrant*, 67 Colum. L. Rev. 1529, 1530 (1967).

[10] *Id.*

[11] *Supra* note 7.

[12] *Id.* at 532.

[13] *See Franks* v. *Delaware*, 438 U.S. 154 (1978) (Appendix B).

[14] *Compare, e.g., United States* v. *Carmichael*, 489 F.2d 983 (7th Cir. 1973), with *United States* v. *Thomas*, 489 F.2d 664 (5th Cir. 1973), *cert. denied*, 423 U.S. 844 (1974).

[15] *Supra* note 13.

[16] *Franks* v. *State*, 373 A.2d 578 (Del. 1977).

[17] *See United States* v. *Axselle*, 604 F.2d 1330, 1336 (10th Cir. 1979).

[18] 586 F.2d 1020 (4th Cir. 1978) (per curiam), *cert. denied*, 440 U.S. 959 (1979).

[19] *Id.* at 1025.

[20] 586 F.2d 1068 (5th Cir. 1978), *cert. denied*, 440 U.S. 928 (1979).

[21] 591 F.2d 506 (9th Cir.), *cert. denied*, 441 U.S. 950 (1979).

[22] 602 F.2d 458 (1st Cir. 1979).

[23] 578 F.2d 133 (5th Cir. 1978) (en banc).

[24] 630 F.2d 1207 (7th Cir. 1980).

[25] *Supra* note 7.

[26] *Supra* note 13, at 163 n.6.

[27] *United States* v. *Edwards*, 602 F.2d 458, 465 (1st Cir. 1979).

[28] 604 F.2d 121 (2d Cir. 1979), *cert. denied*, 446 U.S. 907 (1980).

[29] *Id.* at 151-152 n.16.

[30] 617 F.2d 677 (D.C. Cir. 1979), *cert. denied*, 445 U.S. 967 (1980).

[31] *Id.* at 694.

[32] *Id.*

[33] *United States* v. *Melvin*, 596 F.2d 492, 499-500 (1st Cir.), *cert. denied*, 444 U.S. 837 (1979); *United States* v. *Vazquez*, 605 F.2d 1269, 1282 (2d Cir.), *cert. denied*, 444 U.S. 981 (1979); *United States* v. *Martin*, 615 F.2d 318, 329 (5th Cir. 1980); *United States* v. *House*, 604 F.2d 1135, 1141 (8th Cir. 1979), *cert. denied*, 445 U.S. 931 (1980); *United States* v. *Botero*, 589 F.2d 430, 433 (9th Cir. 1978), *cert. denied*, 441 U.S. 944 (1979).

[34] *United States* v. *House*, 604 F.2d 1135, 1141 (8th Cir. 1979), *cert. denied*, 445 U.S. 931 (1980).

[35] *United States* v. *Martin*, 615 F.2d 318, 329 (5th Cir. 1980).

[36] 388 U.S. 300 (1967).

[37] *Supra* note 24.

[38] 618 F.2d 1119 (5th Cir.), *cert. denied*, 449 U.S. 1086 (1980).

[39] *Supra* note 34.

[40] 507 F. Supp. 761, 765-767 (D.R.I. 1981).

[41] 604 F.2d 613 (9th Cir. 1979), *cert. denied*, 446 U.S. 935 (1980).

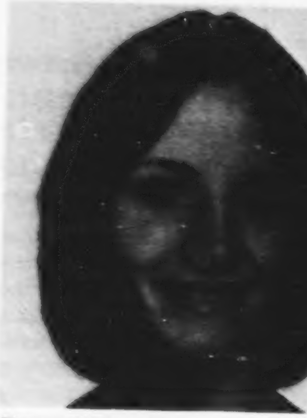
[42] *Supra* note 35.

[43] *United States* v. *Vazquez*, *supra* note 33, *United States* v. *Barnes*, *supra* note 28, *United States* v. *Licavoli*, *supra* note 41.

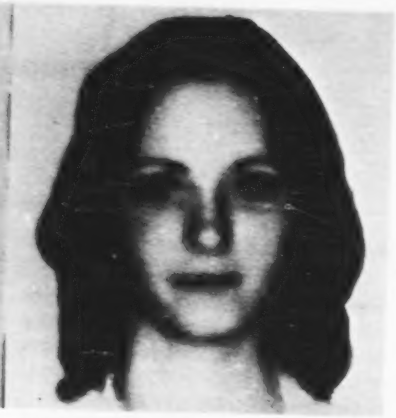
[44] 628 F.2d 779, 784-85 (2d Cir. 1980).

[45] 585 F.2d 941 (8th Cir. 1978), *cert. denied*, 439 U.S. 1133 (1979).

# WANTED BY THE FBI



*Photograph taken 1978.*



*Photograph taken 1980.*

**Cindy Sue Brown**

Cindy Sue Brown, also known as Cindy Sue Baldwin, Cindy Jackson, Sandy Jackson, Cindy Sue Lewis, and Lori Peterson.

**Wanted for:**

Interstate Flight—Murder, Armed Robbery, Probation Violation

**The Crime**

Brown is being sought in connection with the shooting murders of a mother and her 12-year-old son which occurred during an armed robbery.

A Federal warrant was issued for Brown's arrest on January 9, 1981, in Atlanta, Ga.

**Description**

| | |
|---|---|
| Age | 22, born January 12, 1960, Atlanta, Ga. |
| Height | 4′11″ to 5′. |
| Weight | 87 to 90 pounds. |
| Build | Small. |
| Hair | Brown. |
| Eyes | Green. |
| Complexion | Fair. |
| Race | White. |
| Nationality | American. |
| Occupations | Cashier, clerk, venipuncturist. |
| Scars and Marks | Scar on left knee. |
| Social Security Nos. Used | 255-13-6772.<br>255-13-0772. |
| FBI No. | 738 600 V9. |

**Caution**

Brown has been previously convicted on narcotics violations and she should be considered armed and extremely dangerous.

**Notify the FBI**

Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535, or the Special Agent in Charge of the nearest FBI field office, the number of which appears on the first page of most local directories.

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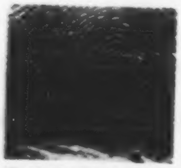

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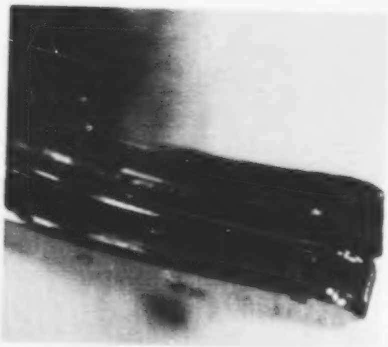

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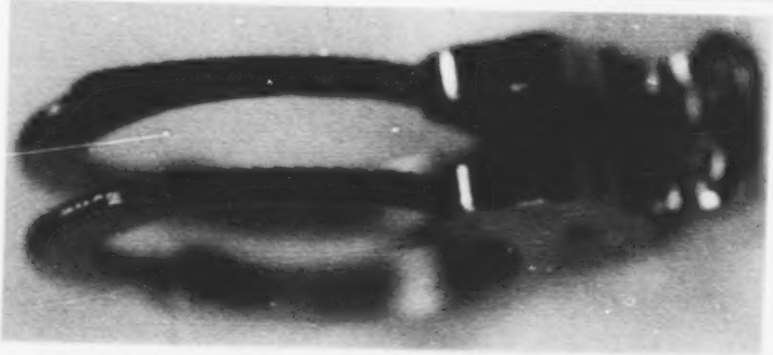
*(Submitted by the Milpitas, Calif., Police Department.)*



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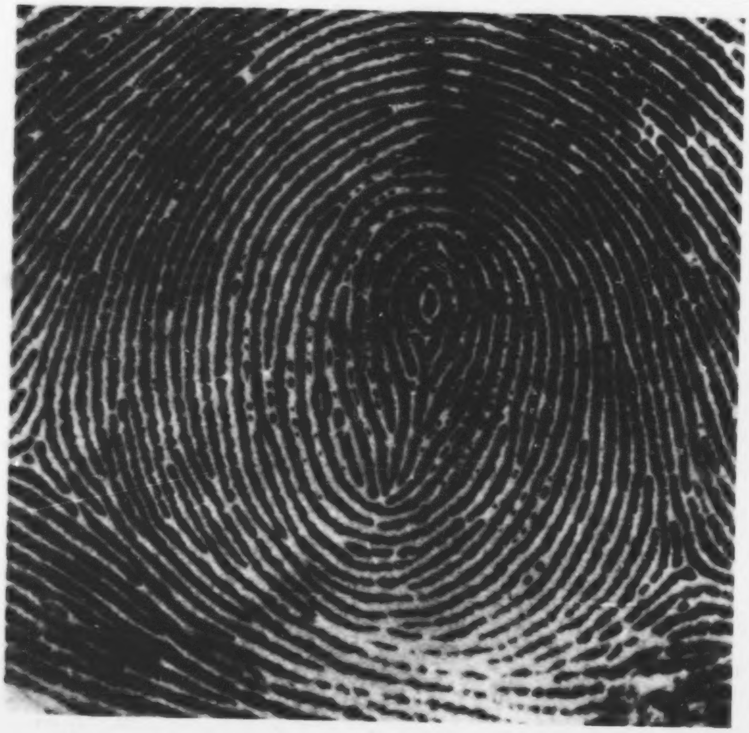

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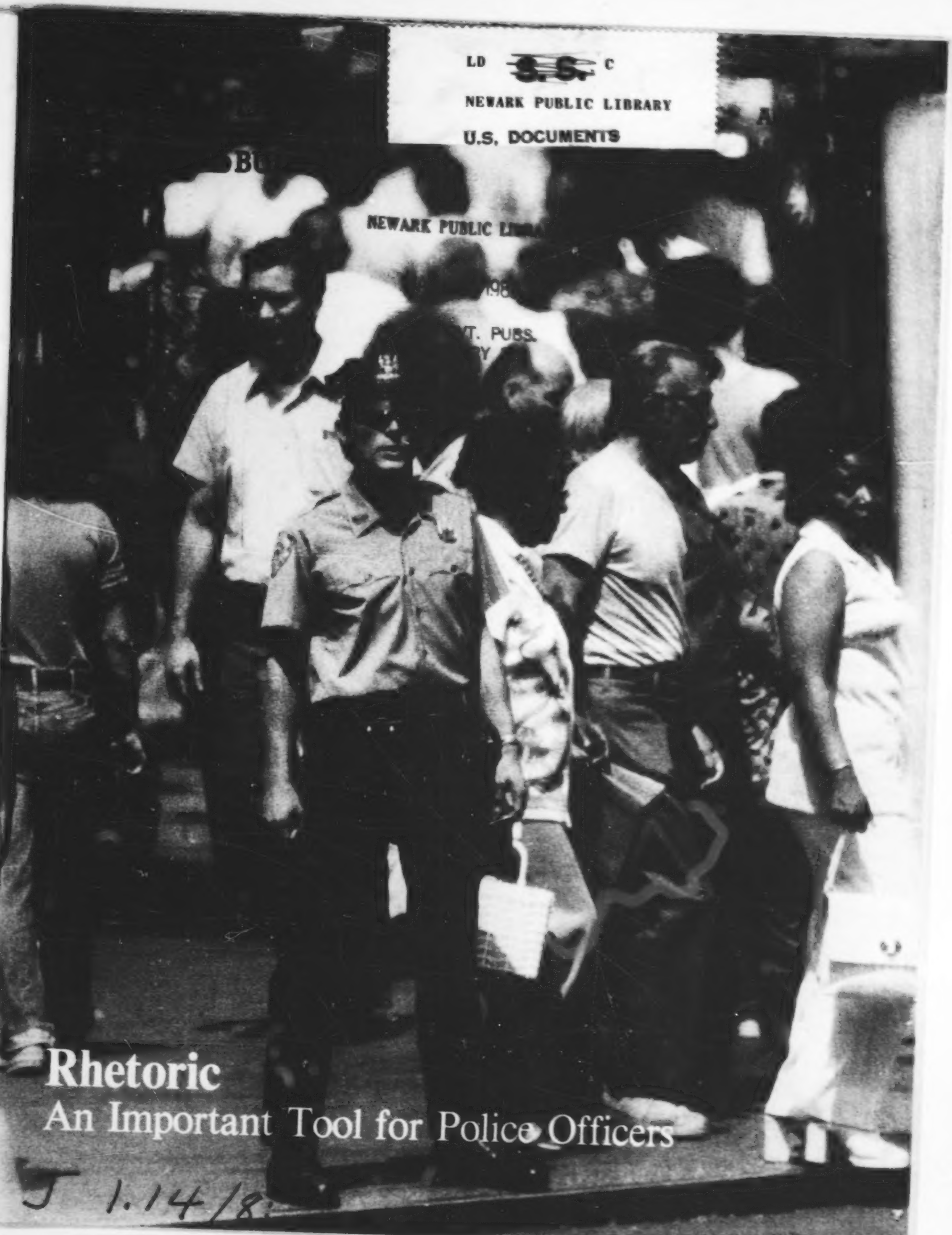

# Rhetoric
## An Important Tool for Police Officers

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**FBI** LAW ENFORCEMENT BULLETIN

APRIL 1982, VOLUME 51, NUMBER 4

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**Federal Bureau of Investigation**
**United States Department of Justice**
**Washington, D.C. 20535**

**William H. Webster, Director**

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through December 28, 1983.

Published by the Office of Congressional and Public Affairs,
Roger S. Young
Assistant Director

*Editor*—Thomas J. Deakin
*Assistant Editor*—Kathryn E. Sulewski
*Art Director*—Kevin J. Mulholland
*Writer/Editor*—Karen McCarron
*Production Manager*—Jeffrey L. Summers

ISSN 0014-5688
USPS 383-310

By
GEORGE J. THOMPSON
*Associate Professor of English*
*Emporia State University*
*Emporia, Kans.*

# Rhetoric
## An Important Tool for Police Officers

*Mr. Thompson*

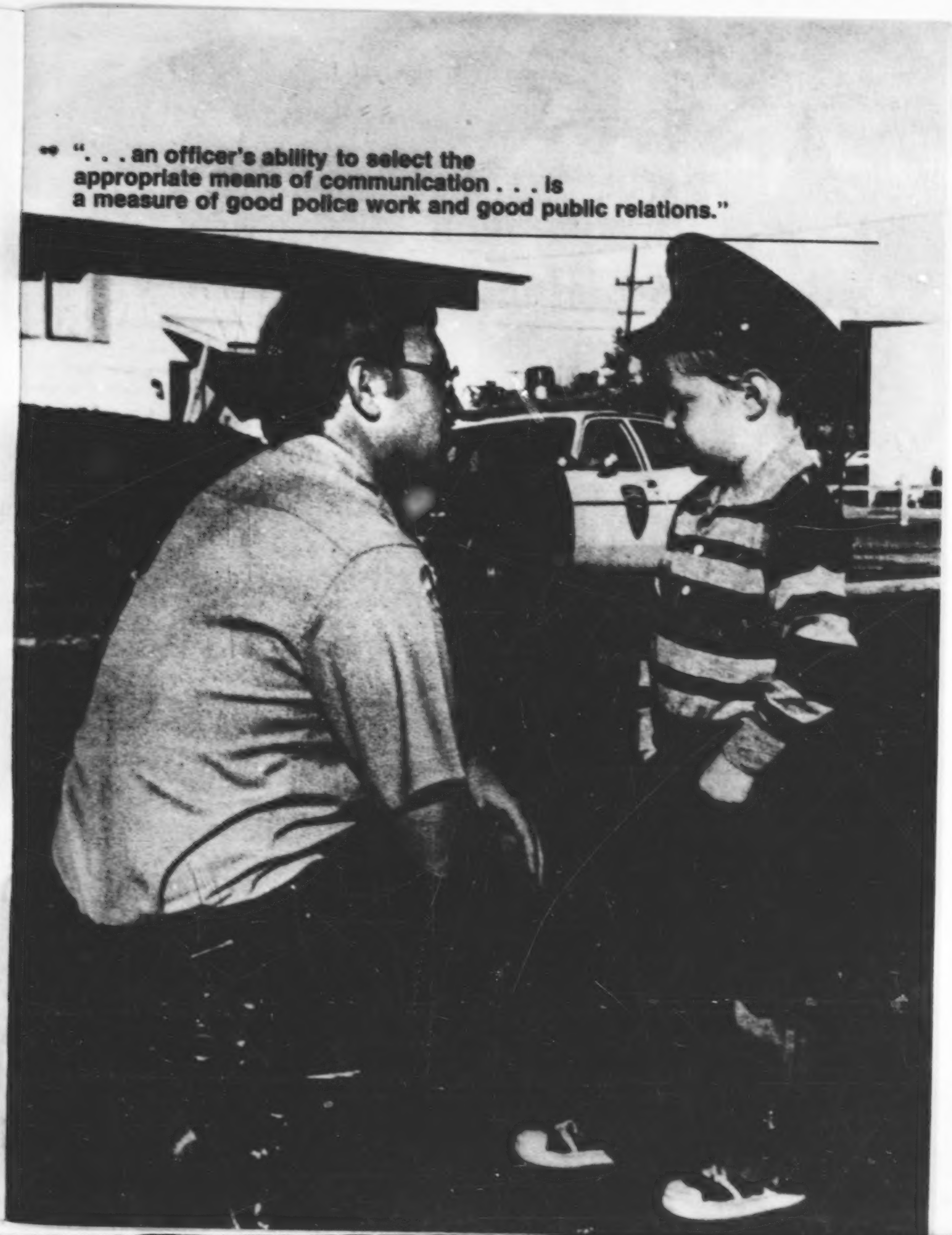
More powerful than mace, the night stick, or the gun, effective rhetoric is an officer's most useful tool in the field. Loosely defined as the art of effective communication, rhetoric is exercised numerous times each day by every officer on duty, whether in civil or criminal matters. Repeatedly, an officer's ability to select the appropriate means of communication, often under surprising or stressful circumstances, is a measure of good police work and good public relations.

Considering the daily pressures of police work—dealing with numerous people whose backgrounds, needs, points of view, and prejudices vary dramatically, moment to moment, as the officer encounters them—it is distressing that so little is presently being done to train officers to anticipate and to handle such complex social situations. Training academies and criminal justice curricula in colleges and universities generally offer little or no specific training in the functional skills of rhetoric. Apparently, criminal justice educators have assumed that such skills have either been learned in a general liberal arts program or that they can be picked up in some phase of the training or probationary period. But such an assumption is probably suspect and certainly should not be relied upon. The skills of practical rhetoric are so necessary to officers in the field that police supervisors should not leave their acquisition to chance or accident.

An often abused and misunderstood word, rhetoric, for our purposes, is most clearly defined as the art or skill of selecting the best available *verbal* means of persuasion at any given moment. I see it as consisting of five basic elements: Perspective, Audience, Voice, Purpose, and Organization (PAVPO).

*Perspective* may be defined as the viewer's point of view; in the case of an officer during a traffic stop or at a public disturbance, it is *his* view of the situation. *Audience* is the person or persons with whom the officer has made contact. *Voice* is the tone in which the officer conveys his information, his verbal personality. *Purpose* is the officer's goal or end, whether it be an explanation, a warning, or an arrest. *Organization* is the way in which the officer chooses to present or structure his communication; the officer must choose when to tell what and how much. The shaping of his communication or message often depends on his interpretation of the first four elements of rhetoric, and it often determines the eventual outcome of the rhetorical situation.

*Perspective*, the first P in the acronym PAVPO, is extremely important. The officer's own point of view is generally influenced by the written legal code. On most scenes, an officer represents not himself but society; he is society's spokesman and authority. Yet he is also a human being, with his own personal point of view and biases, and the many typical police calls—child abuse, beatings, and rapes, for example—wrench his personal feelings, making fair and impartial judgment difficult. As much as possible, the good officer must try to blend his own personal feelings with his sworn legal perspective, letting his humanity come



". . . an officer's ability to select the appropriate means of communication . . . is a measure of good police work and good public relations."

**"The ability to analyze the precise nature of the audience and the ability to act spontaneously on that analysis is one mark of a professional officer."**

through when it can help a situation and suppressing it when it threatens to make him an avenger of the law rather than an enforcer.

An officer's task is further complicated by the necessity to understand the perspective of those with whom he is dealing, citizens often quite unlike himself in every way. These citizens, an officer's *audience*, constitute the most difficult and challenging rhetorical problem for the police officer. Hour by hour during a daily shift, officers carry the pressure of having to see from another's perspective. It is not easy to acquire this habit of mind; it takes practice and training. The ability to achieve a sense of "otherness," a necessary requirement to see from another's point of view, demands a great deal of *disinterest* or nonbias. Sensitive attention to *audience*, the A in PAVPO, is hard to learn and easy to forget, especially under the day-by-day exigencies of police work.

Consider a typical audience problem, for example. Officers make numerous traffic stops during an 8-hour shift. After a while, stopping cars becomes just that—stopping *cars*. It is all too easy to forget that one is stopping *people*. Most people have experienced being stopped by an officer. It is rarely a pleasant experience. It is always anxiety producing. Even if no ticket is issued, the driver usually feels inconvenienced and embarrassed. Typically, police officers forget a traffic stop moments after it has happened, but the person stopped often remembers the event weeks, even months later, and most generally with negative feelings. If an officer has been careless or insensitive in the verbal exchange, it is this that the citizen will remember, nothing else. Too often an officer's reputation, and indeed a whole department's reputation, will be created by the sum of such incidents.

In short, any time a policeman encounters the public, the encounter is apt to have a more lasting effect on the citizens involved than an officer is likely to anticipate, and it will always have, at least, a different effect on the persons involved than it does on the officer. Thus, it is important for officers to see from the other person's perspective. Admittedly, some officers are born with this ability; others develop it out of a sensitive and compassionate view of their job. The officer who is known to possess "street sense" has this skill, this ability to see disinterestedly, but all officers can develop it by gaining a more thorough knowledge and understanding of the principles of rhetoric. The ability to analyze the precise nature of the audience and the ability to act spontaneously on that analysis is one mark of a professional officer. It is often the difference between good police work and bad.

A clear understanding of one's own perspective and that of one's audience aids in the intelligent and judicious selection of tone or *voice*, the V in PAVPO. Most officers know the importance of body language; most know that one's gestures, one's facial expressions, or one's physical stance have the power of one's words. People react to them *as if* they were words. The rhetorical equivalent to body language is voice, the verbal *persona* or character conveyed by one's tone. Every officer knows that if he wants a problem in a resisting arrest situation of some sort, it only takes a word or two to get it started. Words can ignite or defuse. The way something is said makes every difference, and tone and diction (word choice) are the determiners. The way in which an officer voices his questions, his commands, or his statements should be a matter of conscious choice. During a typical day, an officer will employ countless different voices, create and recreate his public personality again and again. He must be a chameleon, a master of the changeable *persona*. He becomes the person he must be to handle each situation.

Practically every situation calls for a different voice. A traffic stop, one moment, involving an elderly and confused driver, will be followed, perhaps, the next moment, by an angry and belligerent driver. An encounter with an erring but respectful teenager, one moment, may well be followed by a sneering and hateful one the next. Or, literate professionals, one moment, the ignorant and illiterate the next. In each case, the officer must respond in a verbal way, but rarely is this "way" the same. When to be polite, even deferential, when to be stern and commanding, when to use the language of the street, and when not—all these problems are rhetorical problems and all demand that the officer know his audience well enough *to make* or *create* the best verbal response he can. The voice carries the message; if the voice is wrong or inappropriate, the message, no matter how well-intentioned, will not be accepted without a problem.

Indeed, like the professional actor, the police officer must be capable of many voices and many roles for his audience is never the same. Because so much of his daily work—and its quality—is dependent on the habitual exercise of this skill, an officer should not leave the training of this skill to chance. The study of rhetoric can teach him not only how to understand his own perspective and how to analyze his immediate audience but also how to *choose* and *create* the most appropriate voice to convey his words.

Partly, of course, an officer's choice of voice will be governed by his *purpose*, the second P in the acronym PAVPO. Voice and purpose should be in harmony. Problems arise on the street when an officer's voice is illsuited to his immediate purpose. If an officer's purpose is to inform, clarify, or persuade, the voice he adopts should be consistent with that purpose. Confusion in any or all of the rhetorical areas of perspective, audience, or voice will lessen an officer's ability to achieve his purpose. In any situation, an officer must have a clear sense of purpose if he hopes to act with consistency and fairness. Unsureness of purpose leads to erratic and confusing behavior, an attribute the officer can ill afford. Matters which call for police attention need an officer to give clarity of direction and purpose, not the reverse. Officers make errors on the street when they confuse intentions, such as the intention to inform with the intention to persuade or vice versa.

The last element to consider in rhetoric is *organization*, the O in PAVPO. This refers to the problem of structuring a communication or verbal response. There are many ways to structure or shape a single message. An officer in a street scene plays a dual role—he is both actor and primary director. Every street incident is a minidrama, with its own beginning, middle, and end, but this structure is amenable to countless variations and modifications, most of which are a result of the way in which an officer decides to direct the scene. Police procedure, of course, helps dictate the basic structure; it is the officer's given script. The attempt to determine, for example, whether a driver is under the influence (DWI) has prescribed steps, legal and departmental, which the officer must follow. Beyond this, how the officer will structure the rhetorical encounter with the subject is greatly a matter of improvisation. Like a detective conducting an interrogation, the street officer must decide when to ask what and when to make the actual arrest, if there is to be one. He must direct and shape the encounter. Too much delay may result in a fight; too quick a judgment may have the same end. The officer must not only be professional, he must also *appear* professional, both to the subject involved and to any bystanders in the area. The officer works the public theater of the streets, and much of his professional success depends on how he goes about his job. Should he "muddle" through a traffic stop or an arrest incident, he can expect problems. The skillful officer knows the procedural and legal script, but he also knows how to structure those steps to fit the particular rhetorical situation.

The acronym PAVPO, then, represents the five elements in every rhetorical situation, and officers have to use these elements each day, often unconsciously or spontaneously. The professional learns to manipulate these elements quickly and skillfully; the amateur never learns. Rhetorical expertise is so necessary to good police work that it is surprising that responsible leaders in law enforcement have been generally content to regard it as a preemployment matter, something a recruit probably has picked up elsewhere. Criminal justice personnel in colleges, universities, and training academies might well consider adding a sixth course to the present five-course curriculum first created by the 1970 Annual California Association of Justice educators. Such a course, perhaps entitled Practical or Functional Rhetoric, would best be taught by instructors who have police experience and academic credentials. Training academies, particularly, would do well to offer recruits a rigorous course in rhetoric, one that would be specifically

**“. . . because communica[illegible]namic, fluid, and a constant-changing mediu[illegible]olice officer . . . needs to be linguistic[illegible] and shrewd.”**

designed to meet the realistic demands of the street. Intending to do for the officer what moot court presently does for lawyers, a rhetoric practicum or seminar could, by employing simulation techniques, train officers to make conscious and intelligent rhetorical choices. If approached as a problem-solving course rather than a purely theoretical "book" course, a rhetorical practicum which taught the five elements of rhetoric I have described would significantly improve an officer's street ability, and simultaneously, enhance his public image—a rare combination.

It is precisely because communication is a dynamic, fluid, and a constant-changing medium that the police officer, perhaps *more* than most professionals, needs to be linguistically flexible and shrewd. At all costs, he must not be deficient in the skills of judgment, tact, and command presence if he is to survive and to be regarded as a true professional. Much of one's judgment, one's tact, and one's command presence is a result of rhetorical skill. Dealing as he does with the public, the hottest possible arena, the police officer must be a master of rhetoric. He must know his own perspective, he must know how to couch his communication, he must be sure of purpose, and he must be clever in structuring his message. He must be able to speak in a variety of ways to a variety of people. He is actor and director in countless scenes daily. Ultimately, he should be linguistically rich and rhetorically smooth.

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In short, though effective communication may appear spontaneous, it is usually the result of informed instinct and good training, a training which has taught the art of selecting the best verbal mode of response to a given situation. In the past, most officers have had to rely on street experience to give them this training, but such an approach takes time and can be costly and dangerous to everyone concerned when mistakes are made. I believe officers deserve a better break than this; they deserve as thorough a preparation for the streets as we can give them. The night stick, the mace, and the gun have their place in the street world of the officer, and he generally receives good training with each of them. But because police work is finally more rhetorical than violent, we should prepare each officer to function skillfully and imaginatively, with confidence, in this area. **FBI**

# Coordination and Consolidation of the Police Personnel Selection Process

By
LEONARD TERRITO, Ed. D.
*Department of Criminal Justice*
*University of South Florida*
*Tampa, Fla.*
and
ONNIE K. WALKER
*Supervisor*
*Police Applicant Screening Service*
*Pinellas Police Standards Council*
*Clearwater, Fla.*

An area of rapidly growing concern in law enforcement is the selection process for police officers. This concern is valid for at least two reasons. First, the ultimate success of any organization, regardless of its nature or purpose, is primarily dependent on the competence of its personnel. All other organizational resources are less valuable until personnel are properly selected and trained.

The selection process is especially critical as it applies to law enforcement agencies. Because a police officer is entrusted with awesome power and responsibility, administrators must take special care to insure that only highly capable individuals are permitted to serve. Failure to do so could have serious consequences for the law enforcement agency, the individual police officer, and the citizens.

A second major factor in the need for a careful personnel selection process is the necessity for guaranteeing that each applicant is processed in accordance with equal opportunity employment procedures.[1]

In an effort to accomplish these goals in an effective and economic manner, the chiefs of police in Pinellas County, Fla., and the county sheriff agreed in 1975 to work toward the coordination and consolidation of all phases of the police personnel selection process. Pinellas County has 20 municipal police departments and a single sheriff's department. The two largest cities in this south central county of Florida are St. Petersburg and Clearwater.

The decision to consider consolidating segments of this highly specialized police function was made for a number of reasons. First, it was considered to be more cost effective to have these functions performed by one group of highly trained and carefully selected individuals rather than to have them handled in a nonuniform way by officers from different police departments in Pinellas County. Second, the implementation of such a practice assured a high degree of quality control in all phases of the screening process—assurance that could not be given under the previous system.[2] Created to perform this function was the Police Applicant Screening Service (PASS) which was made a part of the Pinellas Standards Council.

The PASS team is comprised of four staff members: A supervisor, two investigators, and a polygraph examiner employed to perform this function exclusively. The PASS office also has two full-time secretaries.

## Applicant Sign In

When individuals indicate an interest in being employed as a law enforcement officer in Pinellas County, they are requested to "sign in," at which time they are furnished a file jacket with their file number. The folder contains the following forms which the applicant is required to complete, sign, and date:

1) Equal employment opportunity questionnaire;
2) Police applicant screening service procedures;
3) Selection standards for police officer position in Pinellas County;
4) PASS policies;
5) Application for police screening;
6) Previous law enforcement background;
7) Waiver of damage claim by applicants;
8) Military Statement Form 180N, "requests pertaining to military records";
9) Educational letters;
10) Personal inquiry waiver authority for release of information; and
11) Liability waiver.

## Written Test

Applicants are given one of three different tests comprised of 120 multiple-choice questions. All three examinations have essentially the same type of questions. An applicant must make a minimum score of 60 to pass. The test is graded in his presence at the PASS office. If he fails the first written test, he is informed at that time that he

*Dr. Territo*

*Mr. Walker*

can take a second test that same day if he chooses, or he may return at a later date. If the applicant fails the second test, his file is administratively closed, and he will not be given an opportunity for further examinations.

When an applicant passes the written test, he is advised that the next phase of the process is the completion of the physical agility test. He is informed of the various segments of the test and is advised when and where the test will be conducted.

### Agility Test

The physical agility test is given two times, one day a week. Applicants are immediately advised whether they have passed the test. If they fail, they may be retested at the next regularly scheduled time. There is no limit to the number of times an applicant may take this test.

### Personal History Form

If an applicant passes the physical agility test, he is furnished a personal history form. Upon completion of this form, the applicant is scheduled for a polygraph interview. Failure to return the personal history form within 2 weeks will result in the applicant's file being administratively closed.

### Polygraph Interview

The polygraph interview, conducted at the PASS office, takes approximately 2 to 3 hours to administer. Before the creation of PASS, there was no uniformity regarding the use of the polygraph in the preemployment screening process. In some instances, Pinellas County police departments used their own departmental polygraph examiners for the screening process. In other cases, police departments chose not to use the polygraph, while still others employed private polygraph examiners. With the creation of PASS and the employment of a single highly qualified polygraph examiner, uniformity and quality control were assured. In addition, there are now standardized polygraph questions.

Once the polygraph examination is completed, the findings are forwarded to the advisory council, and the applicant is fingerprinted and photographed. The fingerprints are then forwarded to FBI Headquarters in Washington, D.C.

### Review of Applicant's File

The advisory committee of the Pinellas County Police Standards Council meets once a month and reviews all applicant files to determine whether the PASS office should continue its screening process. If an applicant is deemed unacceptable, he is so informed. If the applicant is acceptable, notification is sent to him, advising him when to appear for an oral board interview. If it is determined that an applicant does not meet selection standards, he may appeal the advisory committee's decision by writing a letter to the chairman of the Pinellas County Police Standards Council who will arrange to reintroduce the applicant's case, along with the applicant's appeal comments, to the advisory committee. If the appeal is granted, the advisory committee will order PASS to continue processing the applicant.

### Oral Board

The oral board, which meets once a month, usually consists of a member of the Pinellas Police Academy staff, two sergeants, and two patrol officers. Each police officer must be from a different Pinellas County police agen-

**"The system is advantageous to the applicant because he no longer has to contact a large number of agencies to get information about entrance requirements, salaries, and availability of positions."**

cy, and oral board members may vary each month. Board members are selected from a list of suitable personnel provided by each police department. All police officers on this list are volunteers who have at least 3 years of law enforcement experience.

Members of the oral board grade the applicants independently. If applicants are determined to be unacceptable—a passing score of 60 has been set—they are informed, in writing, by the PASS office.

If the applicant is deemed acceptable by the oral board, arrangements are made to schedule the applicant for a medical examination.

### Background Investigation

The background investigation is expensive and time-consuming. Prior to PASS, there was usually not a particular individual within an agency specifically assigned to perform this function. The task might have been given to a detective who had other responsibilities or perhaps even to a patrol officer who was advised to conduct the background investigation when not on an assignment. This type of hit-and-miss approach to background investigations may result in the employment of officers who are not suited for police work.

Background investigations are, in every respect, as specialized as other types of police investigations, making it essential that the person responsible for conducting the investigation be both experienced and knowledgeable.

### Completion of Investigation

When all phases of the preselection process are completed, applicant information is assembled in a permanent file which is placed in the candidates' pool. These applicants are available for review for prospective positions by members of the council or their authorized representatives.

If an applicant specifies a preference for a particular agency, a memo indicating agency preference is placed in his file. In some cases, an applicant is referred to the PASS office by a particular law enforcement agency; however, if the applicant is deemed acceptable, he is not obligated to go to work for the agency making the referral.

It is important to note that some Pinellas County law enforcement agencies impose additional steps to the preemployment screening process for those applicants they are interested in employing. For example, some agencies require their applicants to take psychological tests; others use their own oral board. This allows maximum freedom to be retained by the law enforcement agencies in the selection process.

### Voluntary Participation

Law enforcement agencies in Pinellas County are not compelled to participate in the PASS program and may decide to take advantage of only a portion of the service. At this time, however, all agencies participate in PASS, either completely or quite extensively. Even if a law enforcement administrator decides not to participate, representatives from that department may still sit on the advisory council.

### Funding

One of the many positive features of the PASS program is that it is free to the participating law enforcement agencies, taxpayers, and applicants. The entire program is funded from a $1 surcharge imposed on all traffic fines and misdemeanor offenses in Pinellas County. All monies emanating from this source are used exclusively for the financial needs of PASS.

### Conclusion

The PASS program has considerable merit for those parts of the country which have many law enforcement agencies in a relatively close or contiguous geographic region. The concept works to the advantage of both the applicant and the participating law enforcement agencies.

The system is advantageous to the applicant because he no longer has to contact a large number of agencies to get information about entrance requirements, salaries, and availability of positions. Additionally, he does not have to take numerous entrance examinations, polygraph examinations, or oral board interviews required in the preemployment screening process.

There is general agreement that PASS is much more cost effective than having individual agencies complete their own selection process. In the past, each police agency had to absorb the total cost of the salaries of investigative personnel, staff support, clerical workers, office space, and all of the other administrative costs associated with the process.

With the development of PASS, agencies can now consolidate and coordinate the police personnel selection process. **FBI**

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**Footnotes**

[1] L. Territo, C.R. Swanson, Jr., and Neil C. Chamelin, *The Police Personnel Selection Process* (Indianapolis, Ind.: Bobbs-Merrill Educational Publishing, 1977), p. vii.

[2] Considerable differences were found in the background investigation practices of Pinellas County police departments in a study conducted by L. Territo. See L. Territo, *A Study of Police Personnel Character Investigation Practices of Municipal Departments in the State of Florida*. (Tampa, Fla.: Unpublished Master's thesis, University of South Florida, Tampa, 1971).

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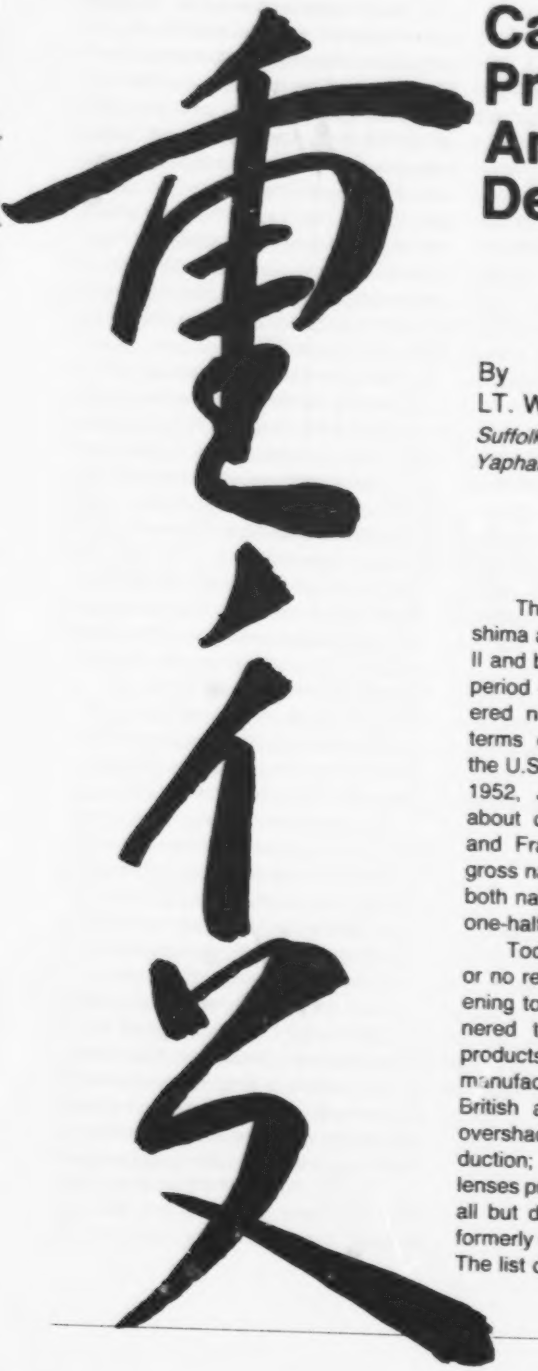

# Can Japanese Management Principles Be Used in American Police Departments?

By
LT. WALTON E. BRENNAN, JR.
*Suffolk County Police Department*
*Yaphank, N.Y.*

The atom bomb attack on Hiroshima and Nagasaki ended World War II and brought Japan to its knees. The period since that time can be considered nothing less than a miracle in terms of Japanese economy. When the U.S. occupation of Japan ended in 1952, Japan's total production was about one-third that of Great Britain and France. By the late 1970's, its gross national product was as large as both nations combined and more than one-half of the United States.[1]

Today, Japan, a country with little or no resources to speak of, is threatening to, and in many cases, has cornered the market on manufactured products. Its intrusion into motorcycle manufacture virtually eliminated the British as viable competitors; it has overshadowed the Swiss in watch production; the quality cameras and lenses produced by the Japanese have all but destroyed the demand for the formerly competitive German products. The list could go on and on.

But, perhaps the most significant intrusion by the Japanese into the marketplace can be felt right here in the United States. The American automobile industry is facing declining demand by consumers who desire quality-built cars. At a time when U.S. automobile manufacturers are closing plants, 35 workers at a highly automated Japanese assembly plant, aided by industrial robots, produce 350 car bodies every 8 hours, seven times the productivity rate of competing U.S. automakers.[2]

Many would like to attribute the Japanese success to character traits within the Japanese people, but the experts tend to disagree. In his book, *Japan As No. 1, Lessons For America,* Ezra Vogel states: "The more I examined the Japanese approach to modern organization, the business community, and the bureaucracy, the more I became convinced that Japanese success had less to do with traditional character traits than with specific organizational structures, policy programs, and conscious planning."[3]

Peter Drucker, the 71-year-old business strategist, believes that there is really nothing mysterious about where the Japanese learned their innovative techniques. "All Japanese concepts of managing people and labor relations are not in the Japanese tradi-

*Lieutenant Brennan*

*Donald J. Dilworth*
*Police Commissioner*

tion, but in the model of I.B.M. And they are only doing what I.B.M. has been doing since 1930."[4] And what has I.B.M. been doing since 1930? The answer is simple—dealing with people as human beings and as a valuable resource.

Drucker goes on to say that the greatest weakness of American businesses is people, while management of people is the greatest strength of the Japanese.[5]

As a police supervisor, I wonder whether Japanese management techniques could be applied to a police setting? Granted, we don't operate an assembly line or produce a product, but still, we deal with people. Our people perform a vital community service, many times without immediate supervision. Could we improve the work performance of officers with their cooperation? Would a new management concept help to tap a hidden store of enthusiasm within the American police system?

Before these questions can be answered, we must determine the ingredients that make up the Japanese management system. Japanese management is characterized by six basic elements:

1) Permanent employment,
2) Long term perspective,
3) Company loyalty,
4) Identification with the company,
5) Bottoms-up management, and
6) Consensus by compromise or nemawashi.[6]

When a Japanese worker is hired by a Japanese firm, he expects never to be laid off, even in economic hard times. This policy tends to stabilize the Japanese work force, and mobility within the work force is minimal. In an interview with *Fortune* magazine, Yotaro Kobayashi, executive vice president for Fuji Xerox, commented: "I was told in my young days that we have three important decisions. One is to select a good university; the second is to select a good company; and the third is marriage."[7]

Permanent employment allows a company to invest heavily in the training of a worker, secure in the knowledge that he will, in all probability, remain until retirement. Toshio Ozeki, senior manager, International Divisions, Nikko Securities, comments on lifetime employment:

> "In Japan we have a so called lifetime-employment system. Workers, and executives too, typically spend their entire working life with a single company. Accordingly, a person tends to think in terms of what can be done during his business career. People are not judged on performance during a short period of time, under pressure, say to produce an increase in earnings. They are under pressure to produce, but not in terms of the next year or two. Executives can take a longer perspective in guiding the organization, which is considered perpetual."[8]

This longer perspective referred to by Ozeki seems to be the general rule in the Japanese company. The goal of the managers is long term survival of the company. The company will sacrifice profits, if necessary, in order to reach a more stable, long range goal.

Loyalty is important in the Japanese company. Not only are the employees expected to be loyal to the

**"'If we look at the United States, there is a very strong tendency . . . to underestimate the potential of harnessing worker cooperation to raise productivity and to improve quality.'"**

company, but the company must reciprocate. The Japanese company is people-oriented. "Employees in Japan view their company as an extension of their family life. Indeed many of them equate the importance of their company with that of their own life," says Ryutaro Nohmura, the owner of a tent-making firm in Osaka.[9]

This loyalty also takes the form of mutual trust between union and management. The union, as a representative of the employee, is treated with respect, and every effort is made to resolve grievances before they reach a confrontation stage. The result has been fewer strikes and less labor unrest in Japan as opposed to other major industrial powers. Japan lost 1.4 million workdays in 1978 because of strikes; the United States, on the other hand, lost 39 million.[10]

Kenji Takitani, director and general manager, Hitachi Metals, describes what he calls the *wa* spirit:

> "When I was in charge of a company in the U.S., I emphasized the *wa* spirit. You know the meaning of *wa*? Harmony. Harmony leads to strength, and this was very difficult to explain to the American executives and employees of that company. But gradually—and I was happy about this—they did understand. The *wa* spirit makes a great difference in the attitude of businessmen or employees in Japan, compared with Americans. The lifetime-employment system comes from the *wa* spirit. We try to keep good relations with the union; again this comes from the *wa* spirit.
> *Wa* means a kind of love. We have to have patience, sacrifice, affection in every segment of the enterprise or the operation."[11]

Identification with the company seems to go hand-in-hand with loyalty. When new employees are hired into the company, elaborate ceremonies are held annually in order to make the occasion memorable. In order to strengthen the bond between employee and company, the employee may be required to take up residence in a dormitory during his training period, even if it means separation from his wife and family.[12] A similar type of program is used in this country by the FBI while training New Agents or National Academy students.

Further identification with the company is fostered by certain rituals that vary from company to company. Identification may take the form of the company motto being recited or a chorus or two of the company song, so that everyone can get into the proper working spirit. At Nissan Motor, every shift begins with a warm-up period of calisthenics on the shop floor.[13]

Bottoms-up management and nemawashi (consensus by compromise) are very closely linked. As a general rule, workers in Japanese plants are not only encouraged but actually expected to make quality control their top priority. To accomplish this, a device called a quality control circle was instituted. A quality control circle is where workers and their supervisors discuss ways to improve output and standards on the job.[14] Furthermore, employees are encouraged by the company to become involved in company decision-making. In reality, however, this invitation is most often extended to middle management, rather than reaching the lowest rung on the hierarchal ladder.

In July 1980, the House Committee on Science and Technology held a seminar on the role of research in economic performance. Robert E. Cole, a sociologist at the University of Michigan, was one of the panelists. He had been studying Japanese management for approximately 15 years and he told the committee:

> "If we look at the United States, there is a very strong tendency among industrial engineers, economists, and management and government officials to underestimate the potential of harnessing worker cooperation to raise productivity and to improve quality. In so doing, I think we underestimate the contribution to be made by the social sciences."[15]

Cole believes that in America, we tend to be locked into an adversary relationship between union and management, whereas in Japan, the Japanese manager seeks to bring about cooperation between the two forces. Japanese managers encourage workers to approach their jobs with ingenuity and commitment.[16]

The Japanese system of reliance on group decisionmaking is pretty much summed up by Hajime Sasaki, director and general manager, Foodstuffs Division, Nissho-Iwai:

> "The central difference between American business and Japanese business lies in decision-making. Japanese decision-making is the gathering of Japanese wisdom. The *ringi* system (a procedure in which a document proposing a decision or course of action is passed along for approval by the persons concerned) allows everyone who is likely to be involved in implementation to participate in the making of the decision. This feeling of participation

**" 'If the Japanese could learn from us with such profit in the past, perhaps there is something that we now need to learn from them.' "**

is very important for the spirit of *wa*." [17]

We in America might find this concept a very difficult one to understand. Usually decisions are made at the top and flow down to the lowest levels through the chain of command. To allow many to become involved in the decisionmaking process sounds too cumbersome and time-consuming.

Yotaro Kobayashi counters this argument by saying:

> "It is true that in the U.S. a decision can be made faster than in Japan, but then it may take a long time to carry out the decision. In Japan, it takes longer to get agreement on a decision, but once it is agreed to, the rest is very quick—those who will be carrying out the decision have already been consulted." [18]

One wonders at this point whether the system of management is a device peculiar only to the Japanese and unworkable in the American industrial environment. Are American workers less ambitious and less concerned with quality than their Japanese counterparts? Can Japanese management principles affect American workers in the same way that it affects Japanese workers?

We will not know the answer to that question without more study, but D.L. Coutu, a *Time* magazine correspondent, decided to take a look at the Sony television manufacturing plant in San Diego where Japanese executives help supervise 1,800 workers. Here is what she found.

Workers at Sony do not punch a time clock. Everyone in the plant is on a first-name basis and eat together in the company cafeteria. They are briefed once a month on sales production goals and are encouraged to air their complaints. They attend company paid parties four times a year. One person working on an assembly line remarked that working for Sony is like working for your family. This camaraderie is apparently shared by many of her coworkers.

The plant manager at the San Diego location, Shiro Yamada, believes that there are few differences between workers in the United States and Japan. "Americans are as quality conscious as the Japanese. But the question is how to motivate them," says Yamada. Yamada finds that bathing his employees in personal attention does the trick.[19]

The end result of Yamada's effort has been productivity approaching that of Sony's Japanese facilities. This year the plant will manufacture 700,000 color television sets, one-third of Sony's total world production. During the recession that occurred in the United States between 1973 and 1975, sales of television sets dropped and production went down significantly. However, no one was fired from the San Diego plant. Since the plant opened in 1972, no one has been laid off.

Several attempts to unionize the plant have been rejected overwhelmingly. It appears that problems can be worked out between labor and management without the need for an adversary relationship. The Japanese style is still confusing to some Americans. One worker at Sony complained, "There is a lot of indecision." [20] Could this "indecisive" type of management build more self-reliance on the part of the individual worker?

Could the Japanese style of management be applied to police departments throughout the United States with the ultimate goal being to increase cooperation between labor and management, reduce police strikes, improve relationships with the public, and improve police service in general, with a reduction in costs? I think that it is worth a try at least on an experimental basis.

In my own police department in Suffolk County, N.Y., hiring requirements are very strict and approximately 5 percent of those applying for the job are ultimately hired. This is also true in many other areas of the country. Like the employee of the Japanese company, policemen generally have lifetime employment. We have a seniority system of wage increases, not unlike the Japanese, and through our oath of office, uniforms, and badges, we have generally identified ourselves with our individual police departments.

If we were to place emphasis on improving the four remaining principles used by the Japanese, would there be an overall benefit to labor and management alike? The Japanese look for the long term perspective rather than reacting to events of the moment. Would anticipation of problems improve our organization? Mutual loyalty between labor and management breeds trust. Couldn't departmental problems be ironed out more easily if we were all committed to the same goals? And finally, bottoms-up management and consensus by compromise might improve both morale and efficiency.

In police work, productivity is difficult to measure at best. Many employee evaluation programs have degenerated into personality contests and caused a subsequent decrease in employee morale. It is relatively easy for a plant manager to determine the productivity of an assembly-line worker as compared to his fellow workers or workers doing the same type of work in another plant. But how do you measure police service?

I do not want to confuse the issue by bringing up such a controversial topic as employee evaluation; volumes could be written on this subject alone. The point I am trying to make, however, is that if Japanese management principles can increase productivity, increase motivation, and improve relationships for assembly-line workers, perhaps we in law enforcement should take a closer look at these principles. Would we not be better off having a police officer, who operates under minimal supervision, feel the same strong sense of loyalty toward his department, supervisors, and the public that the Japanese assembly-line worker does?

Furthermore, has the police officer or patrol sergeant nothing to offer upper management in the form of innovative ideas? Is there an untapped source of ideas out there waiting to be brought forth? When I first joined the police department in 1963, it was not unusual to spend at least one of your days off in court. Many of us at the lower level asked informally why couldn't it be arranged so that we would only have to go to court on the day shift. Perhaps if someone were to schedule court dates for officers, the inconvenience to patrol officers could be avoided. The answer was always the same, "When you become a cop, that's what you have to put up with." Amazingly enough, years later, when paid overtime for court became a reality, a scheduling system went into effect which scheduled officers for court only on the day shift, unless some emergency directed otherwise.

Theoretically, a Japanese manager's concern for his employees would motivate him to rectify a problem without waiting for the union to put his back to the wall. By seeking out problems before they reach the crisis stage and solving them, the employee believes that you really care about him as a person and that you are interested in his welfare. An administrator that follows such a policy has every reason to expect that his employees will be loyal to him and the department.

## Conclusion

We have seen Japan emerge from the rubble of war into one of the most powerful industrial nations on earth. Edwin O. Reischauer, the Ambassador to Japan during the postwar period, suggests that we take a lesson from Japan: "Unquestionably, Japan today has a more smoothly functioning society and an economy that is running rings around us. . . . If the Japanese could learn from us with such profit in the past, perhaps there is something that we now need to learn from them." [21]

Perhaps the police administrator today should look down for the answers to his problem—down into a sea of blue uniforms who are only waiting to be asked. They will not always come up with the answer he would like to hear, and in all probability, it will mean more work to follow through on their ideas, but perhaps in the long term perspective, he will be rewarded with a more efficient and cohesive department. **FBI**

**Footnotes**

[1] James Reston, "Pearl Harbor Plus 38," *New York Times*, December 9, 1979.

[2] Ezra F. Vogel, *Japan as No. 1, Lessons For America* (Cambridge, Mass.: Harvard University Press, 1979).

[3] Ibid.

[4] James Flanigan, "The Wrong Bottom Line," *Forbes*, May 25, 1981, pp. 42-46.

[5] Ibid.

[6] William Bowen, "Panel Discussion: Japanese Managers Tell How Their System Works," *Fortune*, November 1977, pp. 127-138.

[7] Bowen, p. 129.

[8] Bowen, p. 127.

[9] Christopher Byron, "How Japan Does It," *Time*, March 30, 1981, p. 58.

[10] Ibid.

[11] Bowen, p. 127-128.

[12] Vogel, p. 146.

[13] Byron, p. 59.

[14] Byron, p. 57.

[15] Luther J. Carter, "Industrial Productivity and the Soft Sciences," *Science*, July 25, 1980, p. 476.

[16] Ibid.

[17] Bowen, p. 131.

[18] Ibid.

[19] D. L. Coutu, "Consensus in San Diego," *Time*, March 30, 1981, p. 58.

[20] Ibid.

[21] Reston, *New York Times*.

# Cults: A Conflict Between Religious Liberty and Involuntary Servitude?

## (Part I)

By
ORLIN D. LUCKSTED
and
D. F. MARTELL*
*Special Agents*
*Legal Instructors*
*Federal Bureau of Investigation*
*Detroit, Mich.*

*Now assigned to FBI Headquarters

On a busy street in a midwestern metropolitan area, businesses are about to open for the day. One employee arrives in the alley behind a local shop. Before he is able to get out of the car, the passenger's door is jerked open and he is hauled unceremoniously out of the car by two men. A third man opens the driver's door, and ignoring the driver, reaches in, pulls the keys out of the ignition, and throws them down the alley among boxes and barrels of trash. The passenger is muscled into one of two waiting cars. Resistance is easily overcome. He is spirited away, taken against his will across many State lines to a retreat in the mountains of an eastern State. He is kept there for weeks in seclusion.

A few months later, a college student home for the holidays is forcibly kidnaped by four people who conceal themselves in the family garage. Eventually, he too is transported across State lines, handcuffed to one of his abductors. He is slapped and kicked by the people who hold him. His every attempt to escape is thwarted by his abductors. He is moved from place to place to avoid detection. On one such move, the kidnapers make a mistake. They commit a simple traffic violation. While stopped by local police, the police discover the victim and he is freed. To return to his home and family? No! His parents believe they will never see him again!

Both of these incidents are actual cases which occurred within 3 months and 10 miles of each other. In the first case, the abductors kept the victim until they were finished with him and his family rejoiced. The second abduction was interrupted by the police. His family believes this interruption was a tragedy. Both victims, members of religious cults, were kidnaped for "deprograming." The first victim was reunited with his family; the second rejoined his cult.

This article explores some of the legal problems confronting law enforcement in dealing with cults. Part I discusses freedom of religion, found in the first amendment to the U.S. Constitution; part II centers on the manner in which some cult members impose their will on impressionable youths; and part III focuses on the parents and deprogramers who attempt to rescue cult members and return them to their families. Underlying these discussions are the difficulties facing law enforcement in investigating and prosecuting cult members or deprogramers.

### Defining Cult and Religion

There are hundreds of recognized religions throughout the United States. Most are organizations of people bound together by a common belief in a deity and protected from governmental infringement of their religious belief by the first amendment to the U.S. Constitution.[1] Indeed the desire for freedom of religion was one of the reasons for the founding of the United States and one of the basic reasons the colonies originally balked at ratification of the Constitution until the Bill of Rights was added.

Religious organizations are formed for the spiritual benefit of the entire membership. Other organizations have adopted a religious designation in order to fall under the protection of the first amendment, but are actually formed for the benefit of one person or a small group of people which are known as cults. The dictionary defines cult as a system of belief characterized

*Special Agent Lucksted*

*Special Agent Martell*

by "great or excessive devotion or dedication to some person, idea or thing."[2] Estimates of total U.S. membership in cults vary from 3 million to 8 million people belonging to over 3,000 groups ranging in size from 2 or 3 members headed by a guru to several hundred thousand.[3]

The law has attempted to distinguish between cults and more conventional spiritual organizations by defining exactly what is meant by the term "religion." In 1890, the U.S. Supreme Court upheld a statute of the territorial legislative body of Idaho, which forbade bigamists or polygamists from voting and required an oath by every voter that he was not a member of an order that taught, counseled, or encouraged the commission of bigamy or polygamy. In discussing their decision, the Court defined the term "religion" as ". . . having reference to one's view of his relation to his Creator . . ." and clearly distinguished it from worship by a particular sect. "It is often confounded with the cultus or form of worship of a particular sect, but is distinguishable from the latter."[4]

The Court went on to say:

> "With man's relations to his maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, *no interference can be permitted,* provided always the laws of society, designed to secure its peace and prosperity and the morals of its people, are not interfered with."[5] (emphasis added)

Subsequent cases focused on defining religion in a more precise manner. In 1931, Chief Justice Hughes stated: "The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation."[6]

With the onset of World War II and the Korean and Vietnam Wars, the definition of religion came under greater scrutiny because of the increase in conscientious objector resistance to military service. The passage of the Universal Military and Service Act, as amended in 1948, revealed a substitution of the phrase "Supreme Being" for "God" in Hughes' definition.[7]

The Supreme Court discussed this refinement in a series of cases defining religion for conscientious objector status.[8] Justice Clark said the test of belief is "whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God."[9] This definition excluded religious belief based merely on a personal moral code. The Court pointed out that while in these cases the validity of what a party believed could not be questioned, the question of whether the belief was "truly" held was subject to inquiry. It is clear that such a broad definition would include the majority of cults. However, while the Court gave a broad definition of religion (but not including a personal moral code) and decided such belief could not be questioned, the sincerity of the professed believer may be questioned through examination of his action in connection with those beliefs.[10]

This distinction between religious belief and action becomes more important when we examine the first amendment and the free exercise of religion,

**". . . the freedom to believe is protected absolutely, while the freedom to act upon religious motives is not free from Government interference when there is a compelling State interest."**

particularly in light of the fact that the substantive rights interpretation of the Due Process Clause of the 14th amendment opened the way for recognition of religious liberty as a Federal right protected against State interference.[11]

### Religious Freedom under the First Amendment

Basically, the Freedom of Religion Clause of the first amendment has two provisions. First, Congress may not establish a religion, and second, Congress may not prohibit the free exercise of religion.[12]

In the words of Thomas Jefferson, the clause against the establishment of religion is said to provide a "wall of separation between church and state."[13] Subsequent Supreme Court decisions have upheld this view. As a result, the Government is prohibited from establishing a religion or interfering with a religion,[14] from spending money in aid of religious activities or institution,[15] from requiring a belief in God as a test of public office,[16] and from endorsing any form of governmental advancement or inhibition of religion.[17]

While the establishment clause focuses on the purpose and primary effect of legislation barring either Government advancement or inhibition of religion, the Free Exercise Clause protects the religious liberty of the individual against interference by the State.[18]

This free exercise of religion protected by the first amendment is not an absolute guarantee. For example, the framers of the Constitution did not intend to protect cults advocating the necessity of human sacrifices.[19] Moreover, when clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order appears, even the exercise of religion may be at some slight inconvenience in order that the State may protect its citizens from injury.[20]

Thus, the freedom to act, even where religiously motivated, is not entirely free from restriction.[21] When confronted with religiously motivated conduct, the courts use a balancing analysis in which the interest of the religious group is weighed against the State's interest in prohibiting activity harmful to individuals or institutions.[22] Courts have afforded a lesser standard of protection to a religious group when the underlying belief was found to be insincere or only incidentally religious or when the religious activity involves fraud or deception.[23]

An interesting criminal case which illustrates court efforts to balance these conflicting interests is *United States* v. *Ballard*.[24] In *Ballard*, the defendant was accused of fraudulently using the mails to solicit funds for his system of religious belief. In affirming his conviction for using and conspiring to use the mails to defraud, the Supreme Court agreed with the district court's decision to withhold from the jury any questions relating to the truth or falsity of the beliefs, since the first amendment forbade inquiry into such matters.

Such cases illustrate that the freedom to believe is protected absolutely, while the freedom to act upon religious motives is not free from Government interference when there is a compelling State interest. The rationale is that religious belief alone poses no great threat to the rights of others, but when those beliefs are translated into action which obstructs the rights of others, the State may interfere.

The problem arises that almost any public act motivated by religious belief can be labeled "action" and ordinary State interference could unduly restrict religious activities. In 1963, the Supreme Court attempted to resolve this problem in the case of *Sherbert* v. *Verner*.[25] In *Sherbert*, a member of the Seventh-day Adventist Church had been fired from her job because of refusing to work on Saturday, the Church's Sabbath. Unable to find other employment that did not require Saturday work, she filed for unemployment compensation. The South Carolina courts affirmed a decision of a State agency which turned down her unemployment claim because she "failed to accept without good cause, available suitable work offered her by her employer."[26]

When this case reached the U.S. Supreme Court, Justice Brennan, speaking for the majority, pointed out that the sincerity of the religious belief was not questioned[27] and that the State interfered with the practice of her religion by forcing her:

> ". . . to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work on the other hand."[28]

Justice Brennan then sought some compelling State interest which justified the infringement on free exercise of religion by South Carolina's statute. He observed: "Only the gravest abuses, endangering paramount interests, give occasions for permissible limitation [on first amendment rights]."[29]

> **". . . since religious beliefs alone pose no threat to the rights of others, there can be no State interference with these rights."**

In *Sherbert*, he found no such grave abuse. Thus, the Free Exercise Clause required the State to afford substantial deference to the religiously motivated.

Case law after *Sherbert*[30] defines a three-pronged test to determine the constitutionality of State interference with the actions of the religiously motivated. The following factors will be considered:

1) Is there a sincere religious interest?
2) Is there State interference with the religion?
3) Is there a State interest which may justify such interference?

These problems were addressed in *Wisconsin* v. *Yoder*,[31] when the question before the Court was whether a State, under its compulsory school attendance law, may punish members of religious sects whose doctrines forbid conventional postelementary school education. Chief Justice Burger examined at length the fundamental belief of the Amish faith and found a sincerely held religious belief. After determining that there was State interference through Wisconsin's statute of compulsory formal education after the eighth grade, the court concluded that there was no State interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause. Therefore, the State under its compulsory school attendance law could not punish members of the Old Order Amish and Conservative Amish Mennonites community for adhering to its dogma forbidding conventional postelementary school education.[32]

As a result of the above, since religious beliefs alone pose no threat to the rights of others, there can be no State interference with these rights. However, when such beliefs are translated into action, the sincerity of those beliefs, whether the activity is harmful to individuals or whether the activity involves fraud or deception, may be scrutinized by the State and limited constitutionally. Ultimately, the question of where freedom of religion begins and ends with respect to cults can only be answered by examining cult activity with these factors in mind. This will be the focus of part II of this article. **FBI**

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**Footnotes**

[1] First amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ."

Article VI: ". . . but no religious test shall ever be required as a qualification to any office or public trust under the United States."

Fourteenth amendment, Section 1: ". . . nor shall any state deprive any person of . . . liberty . . . without due process of law . . . ."

[2] Webster's New International Dictionary of the English Language, unabridged (1976), 552.

[3] Briggs, "New Spiritual Organizations Considered Likely to Last," *N.Y. Times*, June 22, 1977, at A15, col. 1.

[4] *Davis* v. *Beason*, 133 U.S. 333, 10 S. Ct. 299, 33 L.Ed. 637 (1890), at 342.

[5] *Id.*

[6] *United States* v. *Macintosh*, 283 U.S. 605, 51 S. Ct. 570, 75 L.Ed. 1302 (1931).

[7] 62 Stat. 604, 50 U.S.C.A. App. Sec. 456.

[8] *United States* v. *Seeger*, *United States* v. *Jakobson*, *Peter* v. *United States*, 380 U.S. 163, 85 S. Ct. 850, 12 L.Ed. 2d 733 (1965).

[9] *Id.* at 166.

[10] But see recent dissent of Justice Rehnquist in *Thomas* v. *Review Board of the Indiana Employment Security Division, et al.*, 101 S. Ct. 1425 (1981) wherein he noted an even broader extension of "religious belief" by the Supreme Court to include a personal philosophical choice.

"The court's failure to make clear whether it accepts or rejects this finding by the Indiana Supreme Court, the highest court of the state, suggests that a person who leaves his job for purely personal philosophical choices 'will be constitutionally entitled to unemployment benefits.' " Note 1, p. 1435.

Thomas had terminated his job because of his religious beliefs after he was transferred from a foundry department to a department producing tanks and tried to collect unemployment benefits.

[11] *Meyer* v. *Nebraska*, 262 U.S. 390, 43 S. Ct. 625, 67 L.Ed. 1042 (1923); *Pierce* v. *Society Sisters*, 268 U.S. 510, 45 S. Ct. 571, 69 L.Ed. 1070 (1925); *Stromberg* v. *California*, 283 U.S. 359, 51 S. Ct. 532, 75 L.Ed. 1117 (1931).

[12] First amendment, *supra* note 1, at 2.

[13] VIII Works of Thomas Jefferson, 113 (H.A. Washington ed. 1884).

[14] *Walz* v. *Tax Commission of the City of New York*, 397 U.S. 664, 90 S. Ct. 1409, 25 L.Ed. 2d 470 (1970).

[15] *Everson* v. *Board of Education*, 330 U.S. 1, 67 S. Ct. 504, 91 L.Ed. 711 (1947) where State statute which authorized reimbursement to parents for bus transportation of Catholic parochial schools held unconstitutional.

[16] *Torcaso* v. *Watkins*, 367 U.S. 488, 81 S. Ct. 1680, 6 L.Ed. 2d 982 (1961).

[17] *School Dist. of Abington* v. *Shempp*, 374 U.S. 203, the test being "what are the purpose and the primary effect of the enactment. If either is the advancement of inhibition of religion, then the enactment exceeds the scope of legislative power." Under this test the Supreme Court held that no State law or school board could require Bible reading or recitation of the Lord's prayer at the beginning of each school day.

[18] *Id.* at 233.

[19] *Davis* v. *Beason*, 133 U.S. 333 (1890).

[20] *Cantwell* v. *Connecticut*, 310 U.S. 296, 60 S. Ct. 900, 84 L.Ed. 1213 (1940).

[21] The classic case being *Reynolds* v. *United States*, 98 U.S. 145 (1878) in which the Supreme Court held Mormon practice of polygamy was not protected by the Free Exercise Clause.

[22] *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972); *Prince* v. *Massachusetts*, 321 U.S. 158 (1944) (child labor); *United States* v. *Kuch*, 288 F. Supp. 439 (D.D.C. 1968) (possession of illegal drugs).

[23] *People* v. *Woody*, 61 Cal. 2d 716, 394 P. 2d 813, 40 Cal. Rptr. 69 (1964) belief that religious value of peyote ingestion was aid to spiritual experience; *Founding Church of Scientology* v. *United States*, 409 F.2d 1146 (D.C. Cir.) religious group engaged in marketing "E-meters" as religious devices must expressly holdout a religious purpose in dealings with the public in order to receive constitutional protection and escape regulations.

[24] *United States* v. *Ballard*, 322 U.S. 78, 64 S. Ct. 882, 88 L.Ed. 1148 (1944).

[25] *Sherbert* v. *Verner*, 374 U.S. 398, 10 L.Ed. 2d 965, 83 S. Ct. 1790 (1963).

[26] 240 S.C. 286, 303–304; 125 S.E. 2d 737 (1962).

[27] 374 U.S. 398 at 399.

[28] *Id.* at 404.

[29] *Id.*

[30] *Kennedy* v. *Meacham*, 540 F.2d 1057, 1061 (10th Cir. 1976), *American Friends Serv. Comm.* v. *United States*, 368 F. Supp. 1176, 1182–1184 (E.D. Pa. 1973). *People* v. *Woody*, 61 Cal. 2d 716, 719–726, 394 P. 2d 813, 816–821, 40 Cal. Rptr. 69, 72–77 (1964). See also various commentators: *Religious Cults*, 1978, N.Y. Univ. L. Rev. 1260–1265; Marcus, *The Forum of Conscience: Applying Standards Under the Free Exercise Clause*, 1973 Duke L.J. 1217, 1239; *Abduction, Religious Sects and the Free Exercise Guarantee*, 25 Syracuse L. Rev. 623, 634 (1974).

[31] *Wisconsin* v. *Yoder*, 406 U.S. 205, 32 L.Ed. 2d 15, 92 S. Ct. 1526 (1972).

[32] *Id.* at 214.

# Assessing the Potential for Community Disorder

## A Management Strategy

By
RICHARD J. BRZECZEK
*Superintendent of Police*
*Chicago Police Department*
*Chicago, Ill.*

The civil disorders which began on May 17, 1980, in Miami, Fla., drew considerable and protracted attention primarily because of the absence of such disorders in this country for almost a decade. The analysis and debate of the causative factors, the law enforcement response, and the aftermath are still alive in the media and academic and professional forums. The important question is, "Has anything been learned from the Miami riots?" The answer is obviously, "Yes," and this article attempts to treat the development of a management strategy which was learned from one analysis of the situation.

*Superintendent Brzeczek*

In August 1980, a report prepared by the Enforcement Division, Office of Criminal Justice Programs, Law Enforcement Assistance Administration, U.S. Department of Justice (hereinafter referred to as the Justice Department Report) was issued.[1] It contained an analysis of the conditions in Miami leading up to the disorder, an overview of the disorder, and some very succinct and cogent recommendations for disorder planning and management. In my opinion, it was one of the best law enforcement-related reports ever published.

My interest focused upon the disorder control planning and management chapters. As a result, a committee consisting of approximately 20 high-ranking Chicago Police Department officers was formed. Their collective experience ranged from disorder management, planning, communications, law, and community relations to conducting investigations of excessive force allegations. They were given the initial task of reviewing the Justice Department Report and determining areas of potential applicability to the City of Chicago. A second committee meeting was held to identify the viable portions of the report. There was unanimous agreement in three areas:

1) The development of a *contemporary* disorder control plan,
2) Training for disorder prevention and control, and
3) The establishment of a community assessment center.

## The Disorder Control Plan

The Chicago Police Department issued its first formal disorder control plan in 1969. Contained in two thick volumes, it was not only comprehensive and detailed but also complex, cumbersome, and virtually never implemented except during training exercises. The manpower mobilization procedures became archaic because unit strengths were drastically altered over the past decade to be responsive to new demands for manpower allocation.

The new plan is simpler and represents, at most, approximately 20 percent of the previous voluminous material. Included in the response plan are two mobilization procedures—one using available onduty personnel, the other describing the recall of off-duty personnel. Each mobilization plan has two phases to provide for an incremental buildup of police personnel, if necessary.

The response plan includes a treatment of various principles in disturbance control, e.g., the objectives and offensive, economy of force, maneuvers, and the unity of command, and the characteristics of disturbance control operations, such as psychological factors in crowds and mobs, methods used to incite crowds or mobs, and techniques employed by rioters and dissident leaders, to name just a few. The plan also gives considerable attention to staff and command actions, information handling and effective communications, command post and assembly area activities, dispersal operations, disturbance control formation, methods necessary to counter aerosal weapons, and most importantly, postincident debriefing procedures and reporting. The new plan deals with

**"More positive conduct on the part of the police will reduce negative perceptions of police behavior by the public."**

specific problems common to most civil disorders, while maintaining sufficient flexibility to permit command personnel to adjust control operations contingent upon the nature and scope of the disturbance.

### Training

Training to familiarize personnel with the concepts and maneuvers contained in the emergency response plan is the logical sequel to plan development. The Chicago Police Department's inservice training program in this area has been established as a 3-day block of instruction. Courses designed for the purpose of familiarization with the response plan include hostage/barricade situations, weapons operations, operation of protective equipment such as gas masks, and practicums involving the development of platoon and company responses, squad formations, and new concepts in crowd control techniques.

The inservice training program is undoubtedly the core of virtually every other similar training program designed for disorder control. But in the Chicago Police Department program, there is a substantial amount of time devoted to subject areas designed for the purposes of disorder prevention.

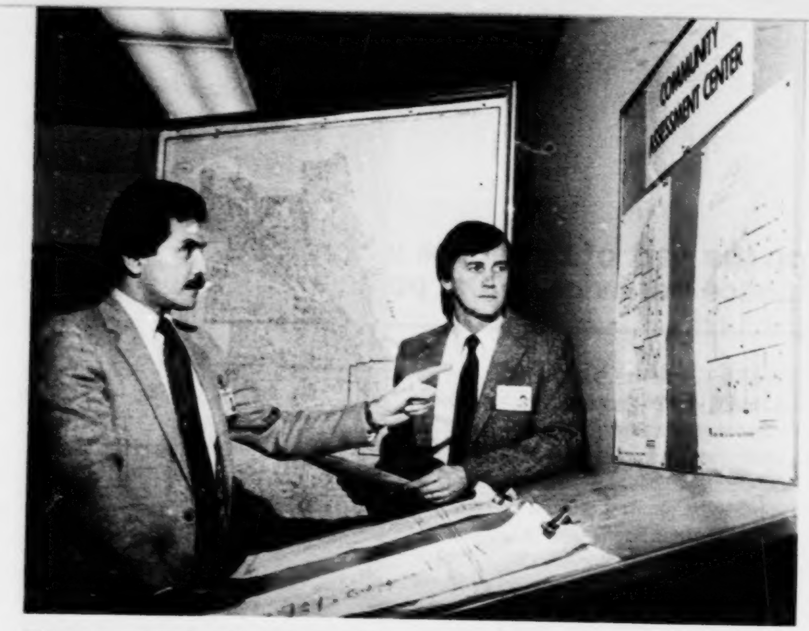
Regardless of the nature or number of identifiable causative factors leading to a civil disorder, the catalyst, all too often, is some police action usually involving the use of force, especially deadly force, directed at one or more members of a minority group. Not every such police action precipitates a civil disorder, but an inordinate number of civil disorders are ignited by some isolated police action.[2]

Law enforcement or the police as an institution has little, if any, control over the socioeconomic, educational, unemployment, or demographic characteristics of the community it serves. These characteristics are most probably affected by the political environment generally prevailing in a given community at any time. Yet, the police must operate in that political environment, facing daily tasks complicated in many instances by negative considerations such as employment, recession, inflation, etc.

Police do have an inherent responsibility in public service. The historical duties of saving lives, protecting property, and enforcing laws still exist. But the foremost and primary mandate of the police is to protect the rights of all persons. Included in this command is that the police themselves do not infringe upon the rights of citizens. The public's perception, real or imagined, of persistent and patterned abusive practices brings the social woodpile very near its kindling temperature. Then, it takes only an isolated incident of some notoriety involving at least the perceived abuse of authority to ignite the situation, or as experience has taught us, actually ignite blocks and blocks of urban areas.

Because the perceived conduct of police is so important as a factor leading to civil disorder, the Chicago Police Department's inservice training program places significant emphasis on police behavior. Special attention is given to State statutes and department policy delineating guidelines regarding the use of deadly force and the use of nondeadly force. Also included in the "use of force" emphasis are classroom and range participation sessions involving the "shoot/don't shoot" concepts, review of department proce-

*Police officers of all ranks receive the same classroom instruction.*



*Police officers discuss potential community trouble spots.*

dures concerning the investigation of firearms discharges by police officers using, among other materials, actual case studies, discussion of use of force reporting procedures, and an overview of the philosophy and necessity of internal affairs operations.[3]

One can readily observe that training focused upon the preventive aspects is basically nothing more than a reinforcement of acceptable police conduct standards. The more management can reinforce those standards through clear policy statements, training, and sanctions (when deviations occur), the more disciplined the organization will be and the less likely police officers will act beyond the scope of their authority. More positive conduct on the part of the police will reduce negative perceptions of police behavior by the public.

**Community Assessment**

The overabundance of litigation filed in the past decade challenging police intelligence activities has resulted in an examination, redefinition, and a new limited application of those formerly acceptable practices. The litigation has put restraints on intrusive police behavior directed at constitutionally protected activity. However, nothing in any of those law suits has diminished law enforcement's responsibility to be aware of the indicators or predictors of future criminal or disruptive conduct. Therefore, law enforcement officials can monitor certain indicators of community tension without engaging in conduct violating anyone's privacy or other right protected by the Constitution.

The Justice Department Report has a 5-page chapter entitled "Assessing the Potential for Disorder."[4] In my opinion, this chapter is the highlight of the report. It succinctly points out the following factors that each urban department must consider if it is to be prepared for the potential disorder:

1) Disorders rarely happen spontaneously but are generally the culmination of long-standing tension in the community.
2) Some departments may not be sensitive to or even aware that community tension exists.
3) There are certain indicators of community unrest and tension, although this list is not all inclusive:
   —disturbance calls involving conflicts between groups,
   —incidents in which the responding police officer finds himself/herself the target of abuse over what is considered routine police action,
   —incidents of stoning police or fire vehicles responding to calls for service,
   —assaults between groups,
   —assaults against police,
   —citizen complaints of excessive force by police officers,
   —changes in media coverage of police events or incidents,
   —lack of citizen willingness to assist police in routine matters.
4) Many times, no single person or unit in a department has the responsibility for collecting and analyzing these indicators of unrest.
5) Information concerning community tension must be disseminated, both within the agency and to appropriate and responsible community leaders.

While these considerations are not exhaustive, they do represent an important basic framework from which one can build an assessment function.

As mentioned previously, the Chicago Police Department command staff committee studying the Justice Department Report identified the community assessment function as an indispensable ingredient in disorder prevention. This decision led to the establishment of a community assessment center within the department's Bureau of Community Services and the issuance of a department directive delineating the philosophy, function, and procedures of the center.

No proactive intelligence gathering is employed. All reports coming into the center are reports generated by other units in the normal course of

**"Preparation is fundamental. Plans are indispensable. But prevention is only accomplished by working together with the community . . . to foster an understanding that we need each other."**

business. Each unit having primary responsibility for preparing the reports is identified in the directive, along with the type of incident it is required to report. Examples of these are:

1) Shooting of/at police officers/firefighters/paramedics,
2) Assaults on police officers/firefighters/paramedics,
3) Damage to police/fire vehicles, facilities, or property,
4) Citizen attempts to remove arrestees from police custody,
5) Demonstrations directed against public figures, agencies, or facilities,
6) Looting incidents,
7) Hostage/barricade/terrorist incidents/threats,
8) Bomb/arson incidents/threats/patterns,
9) Attacks on other governmental personnel, vehicles, or facilities,
10) Large-scale school disturbances,
11) Volatile recreational areas,
12) Gang conflict,
13) Racial, religious, or nationalistic incidents,
14) Calls by police for assistance,
15) Shootings of civilians by police,
16) Excessive force allegations,
17) Media reports focusing on police, identifying community tensions and projections of future unrest, or of criminal proceedings of specific concern to the community,
18) Conflict between community groups.

While the list of categories is probably never complete, it is believed that review and monitoring of the items listed gives us a fairly accurate profile of the degree of tension and unrest in any given community or neighborhood.

In addition to monitoring the reports generated within the department, every other department head in the City of Chicago has been briefed on the concept and is requested to assist the police department in examining the indicators. Complaints of poor service, such as in garbage pickup, street repair and cleaning, or any one of the hundreds of other categories, could very well be clinical symptoms of tension and unrest in the community.

As the analysis process takes place, information is disseminated to Patrol Division command personnel for specific attention to the potentially difficult areas. The Bureau of Community Service works with community leaders on the analytical reports to garner community support and assistance to diffuse a potentially dangerous situation. Other support units, such as the Detective Division, Youth Division, and Field Tactical Services, have a responsibility for reacting to the analytical reports. While being informed on a daily basis as necessary, the mayor receives a monthly summary report which can be used to assess the quality and deployment of all government services.

There is no formula, set of plans, or technique which will guarantee that, if implemented, a civil disorder of any magnitude will not occur. Disorder prevention is a sought-after goal but can never be regarded as absolute. In past generations, the likelihood of a civil disorder occurring was minimal and police management paid little attention to planning the tactics. Even when we were forced to react to actual disorders, as in the 1960's, we didn't do a very good job and looked even worse trying to deal with them. The Miami riots of 1980 resurrected some of those horrible memories of ineptitude and lack of preparedness. With the public and media accounts that the frustrations caused by socioeconomic policies and unemployment may be tangibly manifested in the streets of our urban areas, we as the leadership of law enforcement cannot sit idly, hoping that any storm heading in our direction will change its course and bypass our community. Preparation is fundamental. Plans are indispensable. But prevention is only accomplished by working together with the community, on a daily basis, to foster an understanding that we need each other. **FBI**

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**Footnotes**

[1] *Prevention and Control of Urban Disorders: Issues for the 1980's*, U.S. Department of Justice, Law Enforcement Assistance Administration, University Research Corporation, August 1980.

[2] In July 1980, almost 2 months after the Miami riots broke out during a hot weather spell and with the editorial analysis of Miami still in the headlines, three Chicago police officers were accused of beating to death a black man subsequent to his arrest for smoking on a subway train. The officers were immediately suspended without pay, and several days later, indicted for murder by a county grand jury. Many speculated about the incident as a potential catalyst to ignite a disorder. Swift action by department officers and prosecutors was received favorably, including complimentary and supportive editorial comment. Two of the officers were subsequently convicted of involuntary manslaughter and official misconduct.

[3] The implementation of the training program in late 1980, along with a modification of the deadly force and weapons policies in December 1980, and the requirement that the deadly force and weapons policies be discussed at rollcall training at least once a month, has contributed to a substantial reduction in the number of persons shot by Chicago police in 1981. More importantly, in only one case were administrative charges filed against an officer for violating the department policy. No officers were charged criminally during 1981.

[4] Supra, note 1.

# CONFESSIONS AND INTERROGATION: THE USE OF ARTIFICE, STRATEGEM, AND DECEPTION

By
CHARLES E. RILEY, III
*Special Agent*
*FBI Academy*
*Legal Counsel Division*
*Federal Bureau of Investigation*
*Quantico, Va.*

*Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.*

The constitutional standard for the admissibility of a confession in a criminal prosecution is voluntariness.[1] This article identifies examples of artifice, strategem, and deception that have been employed by law enforcement officers in procuring confessions and analyzes how courts have viewed these tactics as affecting the voluntariness, and hence admissibility, of the resulting confessions.

## The Applicable Standard

As it pertains to the admissibility of confessions, the concept of voluntariness is not easily defined because it has been modified and molded by the courts over the years to accommodate applicable rules of evidence and developing constitutional principles. Some of the factors underlying the voluntariness doctrine include:

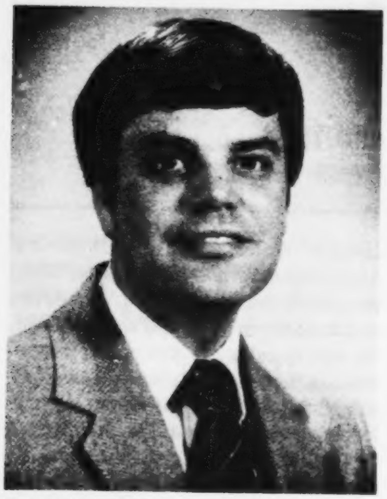
1) Rules of evidence which require that confessions, like other evidence, be reliable;
2) The fifth amendment requirement that no person "shall be compelled in any criminal case to be a witness against himself"; [2] and
3) The 14th amendment, which provides, *inter alia,* that no "State [shall] deprive any person of life, liberty, or property, without due process of law." [3]

Numerous legal articles and textbooks explaining the development, interplay, and goals of the many legal theories that make up the modern concept of voluntariness have been published.[4] However, for purposes of this article, it is sufficient that the three paramount principles underlying the voluntariness doctrine be identified and then discussed in terms of whether a confession obtained through the use of deception violates these principles.

## Principle I: A Confession Is Not Admissible Unless Reliable

Because of the impact the introduction of a defendant's confession can have on the trier of fact and the final outcome of a criminal trial, it is recognized as a fundamental requirement of due process that in order to be admissible, a confession must be reliable. In deciding the issue of reliability, the courts review all the facts and circumstances surrounding the confession, paying particular attention to the interrogation methods or techniques employed by the law enforcement officers who questioned the defendant. With respect to interrogation methods and techniques, the question of what effect their use has on the reliability or trustworthiness of the confession is usually framed in terms of whether the methods used were calculated to produce, or were inherently capable of producing, an untrue statement.[5] In other words: Is the method or technique such that its use is likely to induce an individual to confess to a crime he did not commit?

This approach has resulted in the courts identifying certain interrogation tactics which require close judicial scrutiny because of their inherent capability of producing untrue statements; [6] however, the use of artifice, strategem, and deception has not been placed in this category. The reasons appear to be twofold. First, it is doubtful that many, if any, interrogators use deception for the purpose of obtaining an untrue confession. Second, and more importantly, the courts have generally



*Special Agent Riley*

refused to accept the argument that the types of deception litigated are so inherently coercive that their use is likely to result in innocent men confessing to crimes they did not commit. Thus, methods such as those falsely advising a defendant (1) the weapon used in the crime has been recovered,[7] (2) he has been identified by witnesses,[8] (3) his polygraph test shows he was lying,[9] (4) his partner has given a confession,[10] or (5) his fingerprints or other evidence were found at the scene[11] have not been found to render an otherwise voluntary confession inadmissible.

Even though the courts have found that as a general rule the use of artifice, strategem, and deception by law enforcement officers does not, standing alone, render a confession inadmissible on the grounds that it is unreliable, the readers should not discount the probability that certain extreme examples of deceptive tactics would be viewed in this manner. For example, in *Miranda* v. *Arizona*,[12] the Supreme Court described an interrogation practice known as the "reverse lineup." In this technique, a defendant is placed in a lineup and identified by several fictitious witnesses as being the perpetrator of numerous offenses. It is hoped that the defendant will, in desperation, confess to the crime under investigation in order to escape prosecution for the additional offenses. While the *Miranda* Court did not formally rule on the lawfulness of this technique because it was not directly at issue in the case, the Court was highly critical of the method. Since the technique is such that an innocent man presumably could be induced to confess to a crime he did not commit in order to avoid prosecution for additional offenses, it could be difficult for a prosecutor to argue, and a court to find, that a confession obtained in this manner is reliable.

### Principle II: Even Reliable Confessions Should Be Inadmissible When Obtained By Methods Inconsistent with Basic Notions of Fairness

It has long been argued that certain interrogation techniques and methods, regardless of whether the confessions they produce are reliable, are so repugnant to the constitutional doctrine of "fundamental fairness" that they should be judicially condemned through implementation of *per se* rules of inadmissibility. The argument for such *per se* rules of exclusion has generally been advanced on the theory that it is patently unfair and a violation of due process to allow law enforcement officers to benefit from illegal acts or official misconduct. While this argument has found acceptance in those cases where it is shown that the confession was obtained through such illegal and indefensible tactics as physical brutality and extended incommunicado interrogation,[13] the courts have not been sympathetic to the argument that the use of artifice, strategem, and deception is similarly inconsistent with basic notions of fairness.

**". . . the courts have found that there must be other coercive factors present in a case, in addition to artifice and strategem, before they will find the defendant's right of 'free and rational choice' was violated."**

For example, in *Moore* v. *Hopper*,[14] the defendant was arrested for murdering his girlfriend's husband. The girlfriend was interviewed and advised authorities that she had been with the defendant after the murder and had observed him throw the murder weapon, a gun, off a bridge. During questioning, the defendant was advised that the girlfriend had given a statement. Additionally, he was told that the murder weapon had been recovered, when in fact it had not. Finding no problem with the ruse used in this case, the court noted that the nature of criminal activity is such that artifice and strategem are necessary tools of the law enforcement officer. The court also cited Supreme Court cases in the field of entrapment law which uphold the use of deception to identify individuals engaged in criminal enterprises and argued by analogy that it is no less proper or unfair to use these methods during the interrogation process.

Although having the opportunity, the Supreme Court has never held that the use of artifice, strategem, or deception, standing alone, violates the constitutional doctrine of "fundamental fairness." In *Spano* v. *New York*,[15] the court reviewed a case where the defendant, after having been first indicted and then arrested for first degree murder, was subjected to persistent and continuous police interrogation in an effort to obtain a confession. When the interrogation produced only repeated requests by the defendant to see his attorney, which requests were denied, the interrogators resorted to what is commonly referred to as the "false friend" technique. The technique involved a newly commissioned police officer named Bruno who was a close friend of the defendant. Officer Bruno was instructed by his superiors to tell the defendant falsely that he (Bruno) would be "in a lot of trouble" if the defendant did not confess. On the fourth attempt, the ploy worked, and Spano made a confession which was used against him at trial.

The Supreme Court reversed Spano's conviction on grounds that his "will was overborne by official pressure, fatigue and sympathy falsely aroused. . . ." Furthermore, in addressing the interrogation methods that were used, the Court stated:

> "The abhorrence of society to the use of involuntary confessions does not turn alone on their inherent untrustworthiness. It also turns on the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from criminals themselves."[16]

In cases following *Spano*, defendants have argued that the Supreme Court, as a result of its language in *Spano*, ruled that any confession obtained through artifice, especially if it involved use of the "false friend" technique, was inadmissible as a matter of law. One such case in which this argument was made is *United States ex rel. Latham* v. *Deegan*.[17] The defendant, Latham, while on furlough from the Army, was arrested for burglary. While in custody and after having confessed to the crime for which he was arrested, he was questioned concerning an unrelated homicide. Latham denied involvement in the crime; however, the following day a police detective visited him and introduced himself as an officer in the Army. After the detective had advised Latham that "the Army and I want to help you," Latham made incriminating admissions and ultimately a detailed confession which was entered into evidence against him at trial.

Citing *Spano*, Latham moved to set aside his conviction on grounds that his confession had been obtained through deception. The court rejected this argument, finding that the Supreme Court had reversed Spano's conviction based on a number of factors present in that case and not solely on grounds that the law enforcement officers had employed deception to obtain the confession. The court found that deception by an interrogator, *ipso facto*, does not invalidate a confession, absent other compelling circumstances, and that while other such factors were present in *Spano* (e.g., persistent and continuous interrogation by a battery of interrogators), they were not present in the *Latham* case. Therefore, the court affirmed the order of the district court denying Latham's petition for *habeas corpus* relief.

While the courts are in general agreement that an interrogator's use of artifice and strategem is not inconsistent with basic notions of fairness and therefore does not violate the principle of "fundamental fairness," the reader is cautioned that courts likely would find extreme examples of artifice and strategem (e.g., the reverse lineup) to be in violation of this principle.

### Principle III: A Confession Is Not Admissible, Even Though Reliable, Unless the Product of Defendant's Free And Rational Choice

This principle is a restatement of the constitutional right of a defendant to decide, in an atmosphere free of undue pressure, whether he is going to provide the authorities with a confession or remain silent.

The Supreme Court has articulated this principle in the following way:

> "Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process." [18]

The Supreme Court's explanation underscores the difference between principles II and III. The former focuses on a law enforcement officer's tactics in obtaining a confession, whereas the latter emphasizes the state of mind of the defendant.

In determining whether undue pressure has been exerted on a defendant resulting in his will being overborne, the courts employ a "totality of the circumstances" test, which includes a review of the interrogation techniques used to obtain the confession and an assessment by the court as to what effect these techniques and any other relevant circumstances had on the defendant's decision to confess. Since the effect on the defendant's freedom of choice is what is important, the test requires that the personal characteristics of the defendant (e.g., age, intelligence level, educational level, prior experience with the police, etc.) also be taken into consideration.[19]

A review of confession cases where the "totality of the circumstances" test was employed and where the use of artifice, strategem, and deception was at issue reveals that two general principles have been developed by the courts. First, the use of deception is a factor that the courts will take into consideration under the "totality of the circumstances" test in determining whether the defendant's will was overborne. Second, while relevant, the use of such tactics is not sufficient, standing alone, to warrant a finding of inadmissibility. In other words, the courts have found that there must be other coercive factors present in a case, in addition to artifice and strategem, before they will find the defendant's right of "free and rational choice" was violated. These principles are demonstrated in the cases that follow.

In *Frazier* v. *Cupp,*[20] the defendant was arrested for homicide. During questioning, the defendant admitted that at the time of the crime he had been with his cousin, one Jerry Lee Rawls; however, he denied that he and Rawls had been with the victim or any other third party. At this point, the officer conducting the questioning advised the defendant falsely that Rawls had been arrested and had confessed. Following some additional discussion, the defendant provided a full written confession which was introduced at his trial. Applying the "totality of the circumstances" test in this case, the Supreme Court found:

> "The questioning was of short duration, and petitioner was a mature individual of normal intelligence. The fact that the police misrepresented the statements that Rawls had made is, while relevant, insufficient in our view to make this otherwise voluntary confession inadmissible." [21]

Similar reasoning has been used by the courts in cases where defendants were told falsely that (1) their fingerprints were found at the scene, (2) they had been identified by witnesses to the crime, or (3) their polygraph examinations indicated they were lying.[22]

In *United States ex rel. Everett* v. *Murphy,*[23] the defendant was convicted of murder in the first degree in State court. In his petition for a writ of *habeas corpus* in Federal court, the defendant argued that the confession used to convict him was involuntary because of the circumstances under which it was obtained. The court found that on July 3, 1959, one Finocchiaro was found unconscious and bleeding on the ground floor of a loft building in Brooklyn, N.Y. Finocchiaro died the following day, and 11 days later Everett was arrested. During questioning, Everett was advised that he had been arrested for assault and robbery. He was then told falsely that Finocchiaro was presently at police headquarters, and while he had not been injured seriously as a result of the assault, he was angry over what had happened. The questioning officer then stated that if Everett confessed, he would speak with Finocchiaro and attempt to calm him down. Everett then confessed, and the statement was admitted at trial.

**". . . if artifice takes the form of misrepresentations regarding a defendant's constitutional rights, the law enforcement officer engaged in such a practice may expect that the resulting confession, if challenged, will be suppressed."**

After reviewing Everett's confession under the "totality of the circumstances" test, the court found the confession to be involuntary because Everett had been arrested illegally, subjected to extended incommunicado interrogation, and not advised of his rights. Further, the confession followed the use of deception and a false promise of assistance by the police. However, the court noted that it might have ignored the deception of Everett as to Finocchiaro's survival of the attack if that had been the only basis upon which the confession was challenged.

In finding the confession involuntary in *Everett,* the court placed heavy emphasis on the fact that the effect of telling the defendant that the victim had survived the attack was to make more plausible the police officer's promise that if Everett confessed, he would be protected from the angry Finocchiaro. Unlike misrepresentations that the victim of a murder is still alive or that a co-conspirator has confessed when in fact he has not, promises of leniency or assistance, such as a promise that if the defendant confesses he will receive protection, avoid prosecution, or be prosecuted for a lesser crime, are almost always found to render a resulting confession involuntary.[24] Hence, if artifice takes the form of a promise of leniency or assistance or is used to make such a promise more plausible, the chances that the confession will be found involuntary are greatly increased. Interestingly, although a promise of leniency or assistance usually results in an involuntary and inadmissible confession, most courts have distinguished those cases where law enforcement officers merely promise the defendant that his cooperation in providing a confession will be brought to the attention of the prosecutor, probation officer, or court, and hold that such promises will not render an otherwise voluntary confession inadmissible.[25]

## Artifice and a Defendant's Legal Rights

In 1966, the Supreme Court issued its famous decision in *Miranda* v. *Arizona.*[26] The purpose of the decision was to create a method for determining the voluntariness of a confession without having to resort to the burdensome and time-consuming "totality of the circumstances" test in each case. The *Miranda* rule, simply stated, is that a confession obtained as the result of custodial interrogation is not admissible unless the government proves that before the confession was obtained, the defendant was advised of his fifth amendment rights and freely and voluntarily waived them. The original purpose of the rule may have been to replace the traditional test of voluntariness with one that was more easily applied; however, it is now clear that even if law enforcement officers comply with *Miranda*, a confession can still be ruled inadmissible if it is found to be involuntary under the traditional "totality of the circumstances" test.[27] At the same time, while a violation of *Miranda* prevents the government from using the confession in its case-in-chief, if the confession is found to be voluntary under the traditional test, it can be used to impeach the defendant's credibility if he takes the stand and testifies contrary to the confession.[28]

It is clear from the above that the *Miranda* decision did not replace the traditional "totality of the circumstances" test for voluntariness. Instead, it created an additional rule that must be followed before a confession can be admitted in evidence against a defendant. Since *Miranda* explicitly requires that a defendant who is subjected to custodial interrogation be advised of his rights, and this advice of rights is critical in proving that any waiver obtained was knowingly given, misrepresentations concerning these rights (e.g., that the confession cannot be used as evidence against the defendant) would clearly violate the rule and result in suppression of the confession. Therefore, if artifice takes the form of misrepresentations regarding a defendant's constitutional rights, the law enforcement officer engaged in such a practice may expect that the resulting confession, if challenged, will be suppressed.

## Conclusion

As a general rule, the courts have found that the use of artifice, stratagem, and deception by law enforcement officers does not, standing alone, render an otherwise voluntary confession inadmissible. However, the use of certain extreme forms of deception, for example, the "reverse lineup" technique discussed by the Supreme Court in *Miranda* v. *Arizona*,[29] could result in a finding of inadmissibility by the courts on grounds that they render a confession unreliable, violate the constitutional doctrine of "fundamental fairness," or have the effect of overbearing a defendant's right of "free and rational choice." Additionally, when deception takes the form of a promise of leniency or assistance in return for a confession, or is used to make such a promise more plausible, the chances that the confession will be found involuntary, and therefore inadmissible, are greatly increased. Finally, a misrepresentation of constitutional rights, such as telling a defendant he is required to give a statement, can be expected to result in suppression of the confession.

Although court decisions appear to leave considerable room for the legitimate use of artifice, strategem, and deception by law enforcement officers, the following factors should be considered before such techniques are used.

First, it is important to reiterate that while the use of deception, without more, will generally not result in a confession being found involuntary, the fact that deception was used, coupled with other factors present in a case, could have this result. Therefore, if other circumstances known to the interrogator suggest that a confession, if obtained, could be successfully challenged on voluntariness grounds, deception should be avoided. Such a case would be the questioning of a suspect particularly vulnerable due to age, experience, naivete, or mental or physical impairment.

Second, though a court may find a confession obtained through the use of deception to be voluntary and therefore admissible, the officer who obtains the confession and offers it in evidence at trial must understand that the fact of deception will probably be brought out during cross-examination. This could impact on how much weight the court or jury ultimately places on the confession and the officer's other testimony.

Finally, notwithstanding the fact that a confession obtained through the use of deception has been found voluntary by the trial court, a prosecutor may be reluctant to offer it into evidence unless its admission is deemed essential to obtain a conviction. The reason is that should the confession be found involuntary on appeal, the government is precluded from arguing that the error was harmless. Therefore, the conviction must be reversed even though the other evidence admitted at trial was sufficient to warrant the conviction.[30] **FBI**

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**Footnotes**

[1] *Michigan* v. *Tucker*, 417 U.S. 433 (1974).

[2] U.S. Const. amend. V.

[3] U.S. Const. amend. XIV.

[4] E.g., Y. Kamisar, W. LaFave, & J. Israel, *Modern Criminal Procedure* (4th ed. 1974); W. Ringle, *Searches & Seizures, Arrests and Confessions* (2d ed. 1980); Kamisar, *What is an Involuntary Confession?* 17 Rutgers L. Rev. 728 (1963); White, *Police Trickery in Inducing Confessions*, 127 Pa. L. Rev. 581 (June 1979).

[5] 29 Am. Jur. 2d Evidence §§ 571 and 572; 3 Wigmore, Evidence 281-282 (3d ed.). *See also*, *Canada* v. *State*, 56 Ala. App. 722, 325 So. 2d 513 (Crim. App.), *cert. denied*, 295 Ala. 395, 325 So. 2d 516 (1976).

[6] *Payne* v. *Arkansas*, 356 U.S. 560 (1958) (deprivation of food); *Ashcraft* v. *Tennessee*, 322 U.S. 143 (1964) (extended incommunicado interrogation); *Brown* v. *Mississippi*, 297 U.S. 278 (1936) (police brutality).

[7] *Moore* v. *Hopper*, 389 F. Supp. 931 (M.D. Ga. 1974), *aff'd.*, 523 F. 2d 1053 (5th Cir. 1975).

[8] *United States ex rel. Caminito* v. *Murphy*, 222 F. 2d 698 (2d Cir.), *cert. denied*, 350 U.S. 896 (1955); *Matter of D.A.S.*, 381 A.2d 255 (D.C. 1978).

[9] *Canada* v. *State*, *supra* note 5.

[10] *Frazier* v. *Cupp*, 394 U.S. 731 (1969).

[11] *Roe* v. *People of State of New York*, 363 F. Supp. 788 (W.D.N.Y. 1973).

[12] 384 U.S. 436, 453 (1966).

[13] *See*, cases cited *supra* note 6.

[14] *Supra* note 7.

[15] 360 U.S. 315 (1959).

[16] *Id.* at 320-21.

[17] 450 F.2d 181 (2d Cir. 1971), *cert. denied*, 405 U.S. 1071 (1972).

[18] *Culombe* v. *Connecticut*, 367 U.S. 568, 602 (1961) (plurality opinion).

[19] *Id. See also*, *Fikes* v. *Alabama*, 352 U.S. 191 (1957); *Reck* v. *Pate*, 367 U.S. 433 (1961); *Mincey* v. *Arizona*, 437 U.S. 385 (1969).

[20] 394 U.S. 731 (1969).

[21] *Id.* at 739.

[22] *See* cases cited *supra* notes 7-11.

[23] 329 F. 2d 68 (2d Cir.), *cert. denied*, 377 U.S. 967 (1964). *See also*, *People* v. *Solan*, 343 N.Y.S.2d 31 (App. Div. 1973).

[24] *Brady* v. *United States*, 397 U.S. 742 (1970); *Lynumn* v. *Illinois*, 372 U.S. 528 (1963).

[25] *United States* v. *Fera*, 616 F.2d 590 (1st Cir. 1980); *United States* v. *Perkins*, 608 F.2d 1064 (5th Cir. 1979); *United States* v. *Klein*, 592 F.2d 909 (5th Cir. 1979); *United States* v. *Curtis*, 562 F.2d 1153 (9th Cir. 1977); *United States* v. *Springer*, 460 F.2d 1344 (7th Cir. 1972). *But compare*, *Hillard* v. *State*, 406 A.2d 415 (Md. 1979).

[26] 384 U.S. 436 (1966).

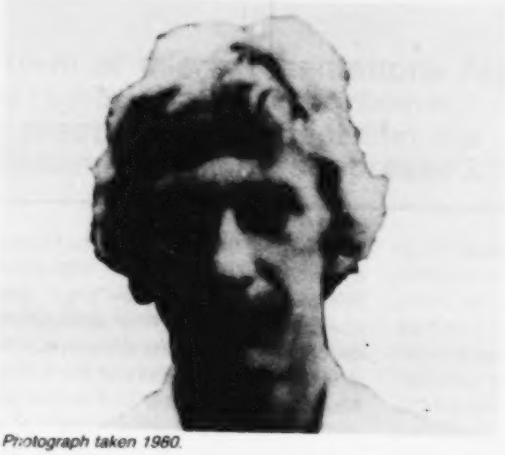
[27] *State* v. *Kassow*, 277 N.E.2d 435 (Ohio 1971), *modified on other grounds*, 408 U.S. 939 (1972); *United States* v. *Rosa*, 493 F.2d 1191 (2d Cir. 1974).

[28] *Harris* v. *New York*, 401 U.S. 222 (1971).

[29] *See*, *supra* note 12.

[30] *Jackson* v. *Denno*, 378 U.S. 368 (1964); *Mincey* v. *Arizona*, 437 U.S. 385 (1978).

# WANTED BY THE FBI



*Photograph taken 1980.*

**William Claybourne Taylor**

William Claybourne Taylor, also known as Michael A. Cauley, Michael Ferris Cauley, Michael Ferris Cawley, Clay Taylor, Wm. C. Taylor, William Clay Taylor, William Claybourne Taylor VII.

**Wanted for:**

Interstate Flight—Murder, Aggravated Battery

**The Crime**

Taylor is being sought in connection with the shotgun slaying of a former Immigration and Naturalization Service official and the aggravated battery of another victim who survived three .32-caliber pistol wounds.

A Federal warrant for Taylor's arrest was issued on August 6, 1980, in Jacksonville, Fla.

**Description**

| | |
|---|---|
| Age | 32, born July 2, 1949, Jacksonville, Fla. |
| Height | 6'4". |
| Weight | 200 pounds. |
| Build | Medium. |
| Hair | Blond (has been dyed red in the past). |
| Eyes | Blue. |
| Complexion | Fair-ruddy. |
| Race | White. |
| Nationality | American. |
| Occupations | Advertising, convenience store clerk, dance instructor, keypunch operator, painter, trumpet player. |
| Scars and Marks | Scar at base of right index finger and right middle finger, burn scar on right forearm, scar on left side, halfmoon scar on one knee. |
| Remarks | Reportedly bisexual; sometimes wears a mustache; frequents adult bookstores; heavy drinker. |
| Social Security Nos. Used | 411-27-5151.<br>414-80-2662. |
| FBI No. | 554 560 G. |

**Caution**

Taylor, an alleged hired assassin, should be considered armed and dangerous.

**Notify the FBI**

Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone number of which appears on the first page of most local directories.

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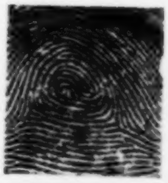

*Right index fingerprint.*

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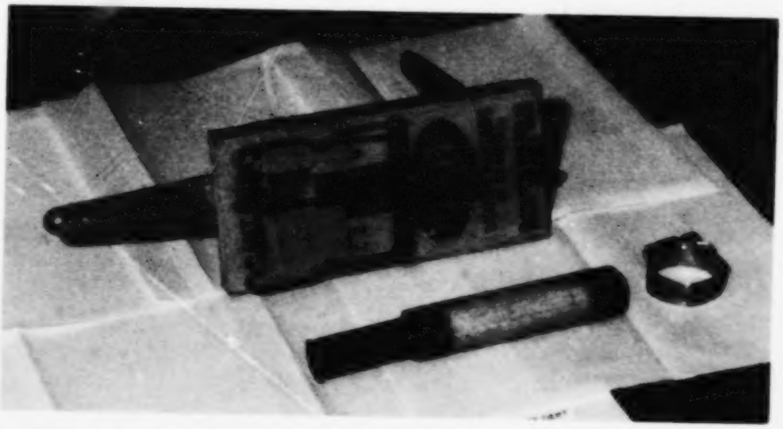
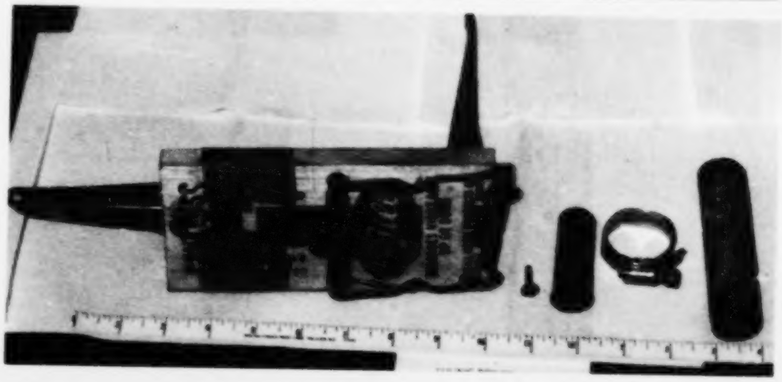
# Rattrap Boobytrap

The Luling, Tex., Police Department encountered this boobytrap while executing a search warrant on some marihuana fields. The trap consists of a 6-inch rattrap, a 10-inch shelf bracket, a 1-inch hose clamp, a nail, a ¾-inch by 4-inch pipe nipple, and a 12-gage shotgun shell.

To assemble, the bracket is positioned under the closed end of the trap and a slot is cut in the trap base to accommodate a nail. The nail, which serves as a firing pin, is alined inside the pipe nipple with shotgun primer. The trap is placed in a tree or on the ground with a monofilament trip wire which releases the spring on to the firing pin, detonating the shotgun shell.





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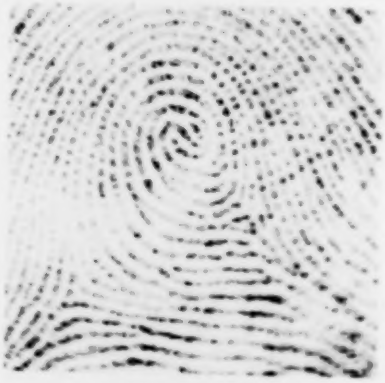
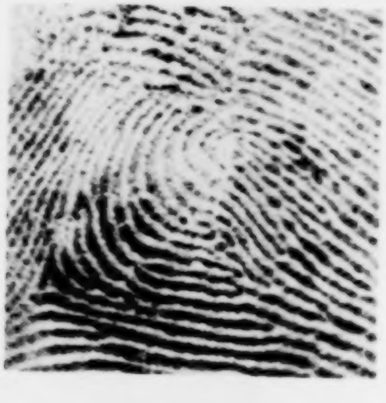
Second Class

# Interesting Pattern

The pattern reproduced this month illustrates the effect that a scar can have on a fingerprint pattern. The pattern at the top depicts a central pocket loop-type whorl before it was scarred. The pattern at the bottom shows the fingerprint impression after it was scarred, causing it to appear as a loop.





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# FBI LAW ENFORCEMENT BULLETIN

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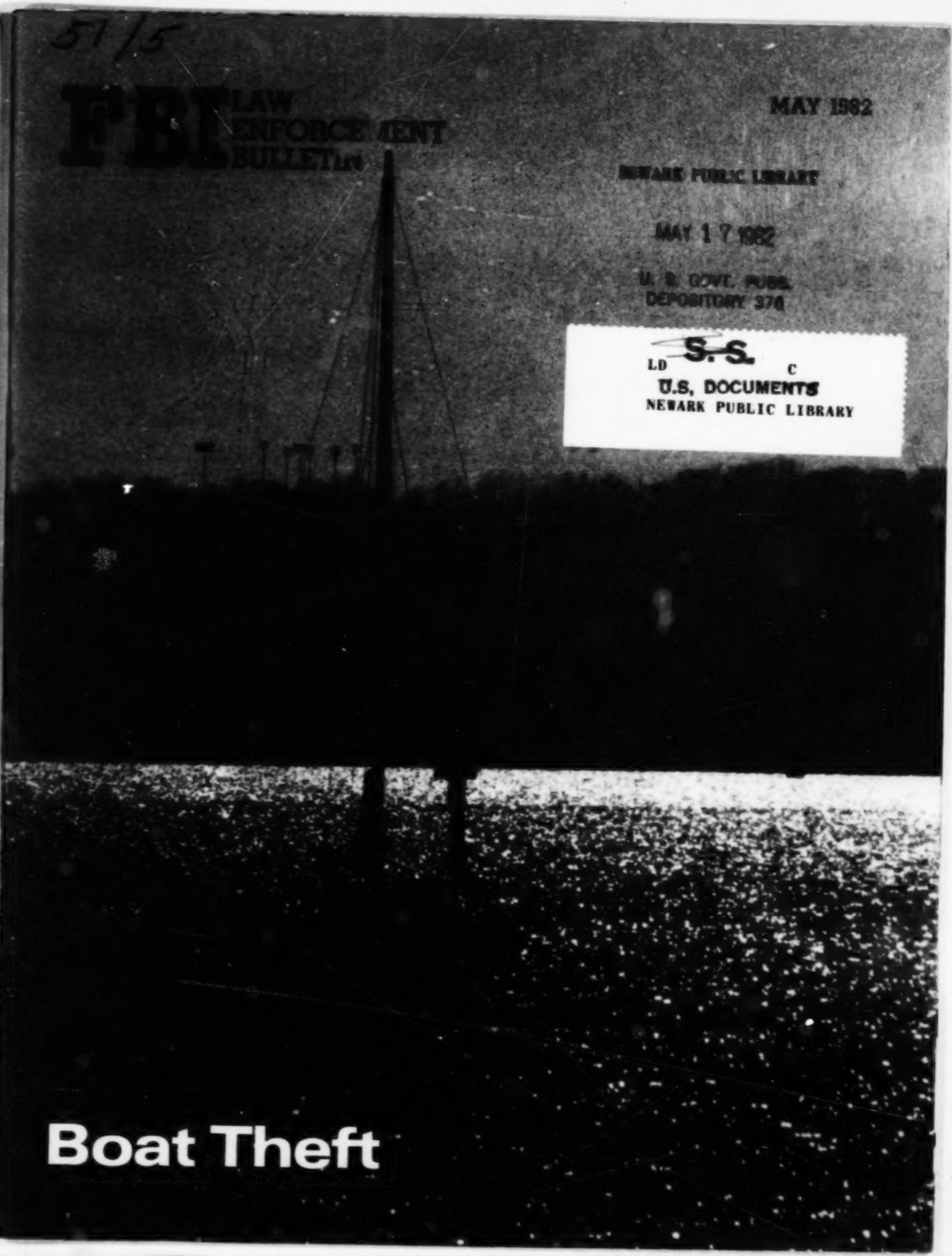

# Boat Theft

**FBI** LAW ENFORCEMENT BULLETIN

**MAY 1982, VOLUME 51, NUMBER 5**

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Theft of boats is a high-profit, low risk opportunity thiefs are finding increasingly difficult to resist. See article p. 1.

**Federal Bureau of Investigation**
**United States Department of Justice**
**Washington, D.C. 20535**

**William H. Webster, Director**

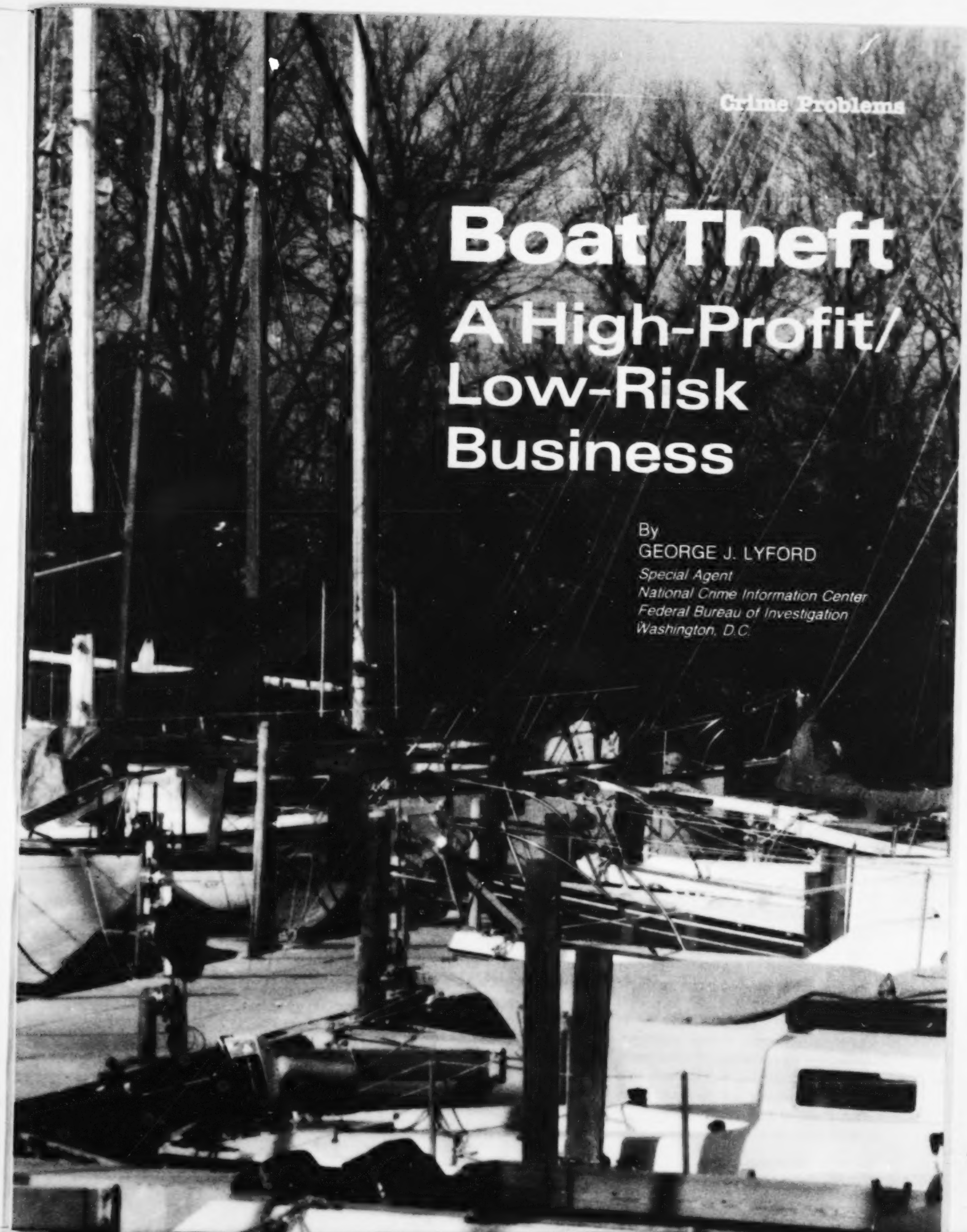
The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through February 21, 1983.

Published by the Office of Congressional and Public Affairs,
Roger S. Young
Assistant Director

*Editor*—Thomas J. Deakin
*Assistant Editor*—Kathryn E. Sulewski
*Art Director*—Kevin J. Mulholland
*Writer/Editor*—Karen McCarron
*Production Manager*—Jeffrey L. Summers

ISSN 0014-5688

USPS 383-310

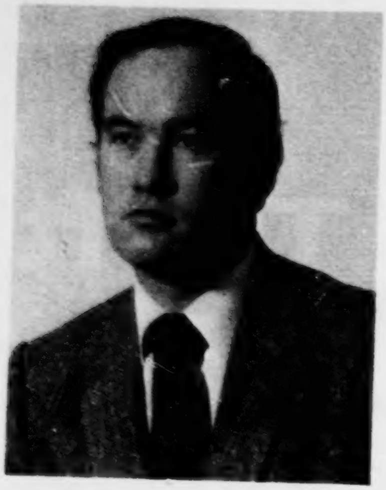


Crime Problems

# Boat Theft

## A High-Profit/ Low-Risk Business

By
GEORGE J. LYFORD
*Special Agent*
*National Crime Information Center*
*Federal Bureau of Investigation*
*Washington, D.C.*



*Special Agent Lyford*

"The theft of boats and marine equipment has become an increasingly serious problem in recent years. Estimates of the dollar value stolen annually vary widely, but there is a general agreement that a loss of $60 million per year is a conservative figure. Closer estimates have not been possible because of the fragmented nature of the problem." [1]

Two of the factors contributing to this increase in marine thefts are the jurisdictional problems among law enforcement agencies which deal with marine theft and the absence of uniform State titling and licensing laws. This can be translated into the blanket statement that "marine theft is a high-profit/low-risk business" that grows with each passing year. In addition, the absence of complete statistical data leaves law enforcement administrators grasping for assistance when they attempt to analyze and study marine theft when allocating manpower. These factors combined result in a general lack of knowledge regarding the problem and a subsequent lack of resources to address the problem.

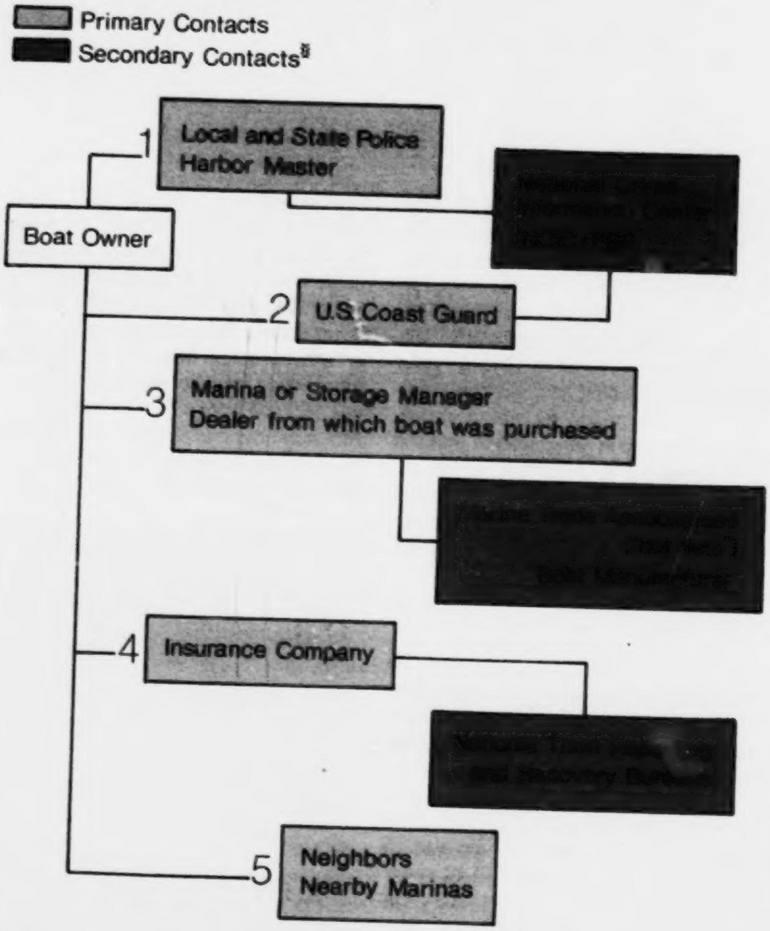
There are numerous groups which have an interest in boat thefts, ranging from the boat manufacturers and their associations, to the owners themselves, to the various law enforcement agencies. While each seek solutions to the ever-present problems of boat and marine equipment theft, all of these groups address the matter in question in their own individual manner.

## Jurisdiction

Marine theft by its very nature defies traditional investigation. The maze of conflicting jurisdictions and the subsequent confusion hampers the ability of the law enforcement community to curtail boat thefts. As a visible and readily available marine law enforcement agency, the U.S. Coast Guard is often the initial contact point for victims of boat thefts. In June 1977, the Coast Guard established policy guidelines for handling incidents of stolen vessels and marine equipment with the publication of Commandants Instruction #16201.3. It details the following five Federal crimes that may be involved in a marine theft incident and investigated by the Coast Guard:

> "(1) The Federal Crime of larceny (as set forth in T18 USC 661) consists of the 'taking' and the 'carrying away' of personal property with the intent to steal within the special maritime and territorial jurisdiction of the United States. The theft of a vessel does not, in itself, constitute a Federal crime unless both the 'taking' and the 'carrying away' of the vessel occur within the jurisdiction.
>
> "(2) Breaking or entering a vessel with the intent to commit a felony, if committed in the special maritime and territorial jurisdiction of the United States, is a Federal crime under T18 USC 2276.
>
> "(3) The theft of a vessel by its captain or any other member of its crew within the admiralty and maritime jurisdiction of the United States is a Federal crime under T18 USC 1656.
>
> "(4) The National Stolen Property Act, T18 USC 2314, prohibits the transportation of stolen goods valued at $5,000 or more in interstate or foreign commerce. Thus, it is a

**Who to Notify if a Boat is Stolen**



[§] While boat owners cannot directly contact these agencies, they should strongly request that the primary contacts quickly do so.

---

Federal crime to cross a state boundary with a stolen vessel which, together with its contents, is valued at $5,000 or more. In this context, a state's boundaries include not only its borders with other states but also its maritime boundary, which coincides with the outer boundary of the territorial sea. Therefore, this Federal criminal statute is violated, in one instance, when a stolen vessel of sufficient value is merely taken to the high seas beyond the territorial sea. Once the vessel has been removed from the state where it was stolen, the Federal crime has been committed and returning the vessel to that state will not eliminate Federal jurisdiction.

"(5) The Federal Boat Safety Act requires numbered vessels to have on board a valid certificate of number whenever the vessel is in use (T46 USC 1469). Anyone who uses such a vessel without a certificate of number aboard commits a Federal crime (T46 USC 1461 and 1483). If the genuine certificate of number is aboard a stolen vessel and the operator of the vessel misrepresents himself to the Coast Guard as the owner or as being in possession of the vessel with the permission of the owner, he violates T18 USC 1001. Likewise, presentation of a forged or altered certificate of number, or one obtained by misrepresenting the applicant as a lawful owner of the vessel, also constitutes a violation of T18 USC 1001.

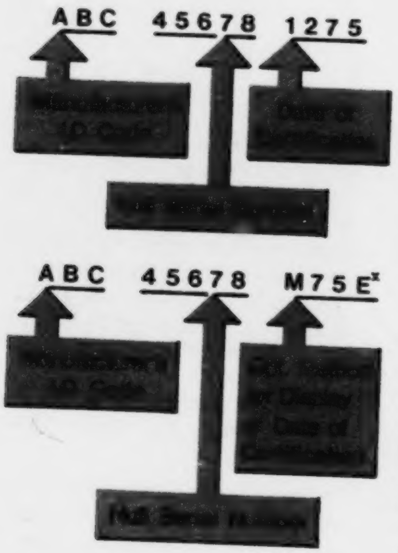
"In cases which do not involve any Federal violation, the Coast Guard may:

"(1) In its law enforcement role, provide assistance to local and state law enforcement authorities under the provisions of T14 USC 141; or
"(2) In its role as protector of persons and property on the water, assist the vessel theft victim directly by helping locate his vessel."[2]

The FBI may have jurisdiction over boat theft under the Interstate Transportation of Stolen Property Statute, T18 USC 2314. This section reads in part: "Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud. . . ." Also, certain crimes described in title 18 of the U.S. Code, such as kidnaping (section 1201), piracy (section 1651), murder (section 1111), and assault (section 113), when committed within the special maritime and territorial jurisdiction of the United States, are punishable in Federal court. The term "special maritime and territorial jurisdiction of the United States," as used in this title, includes: "The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular state, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any

*Figure 1*

**HIN Format**



**^x Key to Month of Model Year**

AUG–A
SEP–B
OCT–C
NOV–D
DEC–E
JAN–F
FEB–G
MAR–H
APR–I
MAY–J
JUN–K
JUL–L

corporation created by or under the laws of the United States, or of any state, territory, district, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular state. . . ." Crimes of this nature would be investigated by the FBI as crimes on the high seas.

FBI policy applicable to T18 USC 2314 is that no investigation will be instituted involving thefts of property valued under $50,000, unless there is sufficient evidence to raise a reasonable inference that the property was transported in interstate commerce or that organized crime figures are involved in the theft. This policy does not preclude investigation being instituted in cases where circumstances and experience indicate interstate transportation of the stolen property is likely. In cases involving stolen property exceeding $50,000 in value, the FBI immediately institutes active investigation to determine whether the interstate transportation of stolen property statute has been violated. These latter cases are classified as major theft matters. The FBI policy, as stated above, was developed in concurrence with the U.S. Department of Justice. In the absence of a theft which comes under the above policy, the primary jurisdiction will rest with the State or local law enforcement agency.

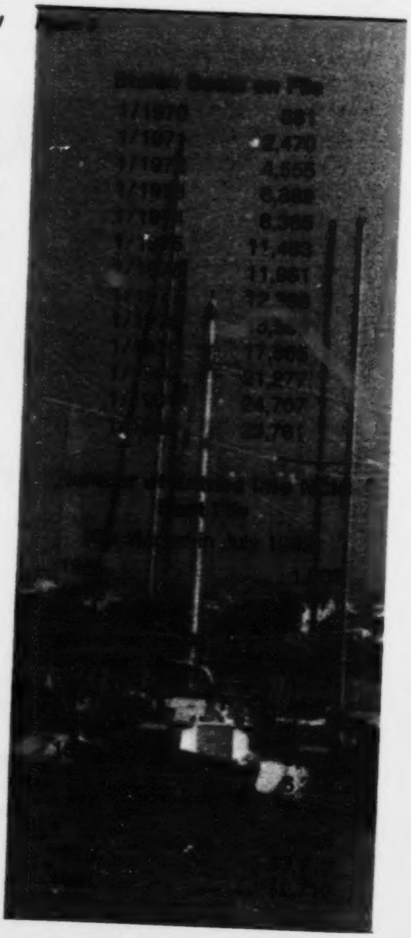
### Boat Titling

In June 1979, the National Law Enforcement Telecommunications System, Inc., conducted a boat registration survey which revealed that 45 States have statutes which mandate titling or registration of boats. The survey also revealed that there are 14 States that have an online stolen boat file and 15 States that have an online boat registration file which is available for law enforcement investigations. Several groups are working to promote the adoption of uniform boat titling which, if adopted, will make all States more effective in determining valid ownership and will assist in curtailing thefts.

### Hull Identification Number

The 1971 Federal Boat Safety Act mandated that every boat manufactured for sale in the United States have a 12-character Hull Identification Number (HIN) permanently affixed to the hull. However, the method of affixation was not specified, and manufacturers have great latitude in its placement on boats. (See fig. 1.)

The HIN was primarily designed to protect the consumer and to assist boat manufacturers in quality control of their inventories. Prior to 1971, boats were manufactured without any means for the consumer to identify the model year. The HIN is a tremendous aid to law enforcement officers who must determine ownership of stolen boats. The greatest problem faced by law enforcement when dealing with boat thefts is the lack of knowledge regarding the HIN and how this number can be used to determine proper ownership. The *National Automobile Theft Bureau's*



Stolen Boats on File

| | |
|---|---|
| 1/1970 | 891 |
| 1/1971 | 2,470 |
| [illegible] | 4,555 |
| [illegible] | 6,389 |
| [illegible] | 8,365 |
| [illegible] | 11,483 |
| [illegible] | 11,961 |
| [illegible] | [illegible] |
| [illegible] | [illegible] |
| [illegible] | 17,966 |
| [illegible] | 21,277 |
| [illegible] | 24,707 |
| [illegible] | 25,761 |

*1981 Passenger Vehicle Identification Manual* briefly describes the HIN for police officers and is readily available to most law enforcement officers.[3]

### NCIC Boat File

In the absence of centralized statistical data, law enforcement agencies can obtain statistical information from two sources, one of which is the insurance industry. While providing valuable assistance, insurance companies are unable to provide a total picture of the problem to the law enforcement community. The other source of statistical data, the National Crime Information Center (NCIC) Boat File, has shown the continued growth of boat thefts since the file became operational in July 1969.

Figure 2 shows the growth of the NCIC Boat File since 1969, but there is no way to determine how many boats are stolen which are not listed in NCIC. And, as is evident in figure 3, the law enforcement community is increasing its use of the NCIC Boat File, demonstrating its growing interest in the marine theft problem.

For NCIC purposes, a boat is defined as a vessel for transport by water, constructed to provide buoyancy by excluding water, and shaped to give stability and permit propulsion. A stolen boat which has a registration number, document number, or a permanently affixed hull serial number may be entered in the NCIC Boat File by the agency that has taken the theft report. A loaned, rented, or leased boat that has not been returned may be entered by an authorized agency, if an official police theft report is made or a filed complaint results in the issuance of a warrant charging embezzlement, theft, etc.

Data fields of the boat file facilitate entry of the following information:

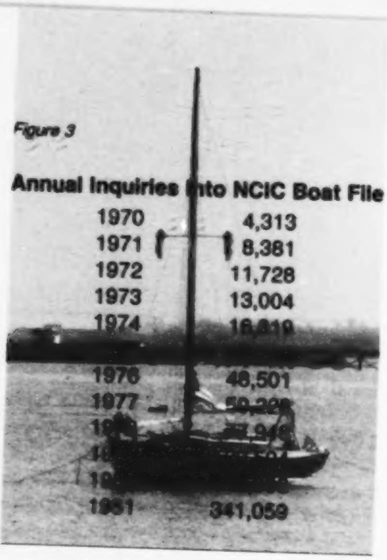


*Figure 3*

**Annual Inquiries Into NCIC Boat File**

| | |
|---|---|
| 1970 | 4,313 |
| 1971 | 8,381 |
| 1972 | 11,728 |
| 1973 | 13,004 |
| 1974 | 16,819 |
| [illegible] | [illegible] |
| 1976 | 48,501 |
| 1977 | [illegible] |
| [illegible] | [illegible] |
| [illegible] | [illegible] |
| [illegible] | [illegible] |
| 1981 | 341,059 |

1) The identity of the agency holding the theft report,
2) The registration or document number of the boat,
3) The identity of the States of registry or United States, indicating that the U.S. Coast Guard issued the registration or documentation number,
4) The year the registration or document number expires,
5) The type of material used to construct the outer hull, e.g., metal, plastic, wood, etc.,
6) The hull serial number,
7) The type of propulsion, e.g., inboard, outboard, sail, etc.,
8) The type of boat, e.g., airboat, houseboat, hydrofoil, sailboat, yacht, etc.,
9) The overall length of the boat,
10) The color of the boat,
11) The date that the theft occurred,
12) The case number of the agency receiving the theft report,
13) The manufacturer's complete name, model name and/or number, and any additional descriptive information that may be used to identify the boat.

The information required for a law enforcement agency to make an inquiry of the NCIC Boat File is complete registration or document number, complete hull serial number, or both registration or document number and hull serial number. NCIC policy requires that any agency receiving a positive-response to a boat file inquiry should immediately contact the agency that entered the record to verify that the status of the record has not changed and that the boat of inquiry is identical to the boat on record.

Since the boat file became operational, records have been entered with the word BOAT in the Make (BMA) Field. The manufacturer of each boat entered in the file is to be identified in the Miscellaneous (MIS) Field. Studies of the boat file have revealed that many records contain misspelled or unintelligible names of manufacturers. Other records contain model names instead of manufacturers' names and some records do not contain a manufacturer's name at all. Records such as these cause problems for inquiring agencies when attempting to identify positively a boat in question. However, the main search parameter is the hull serial number. These problems are currently under study by NCIC and the results of these studies are expected to improve greatly the quality and usefulness of NCIC Boat File records.

### Conclusion

The theft of boats is increasing at an alarming rate, and the law enforcement community must take positive steps to address this problem. Only if law enforcement communities work in cooperation with one another can we begin to lower the profit and raise the risk for the boat thieves. **FBI**

---

**Footnotes**

[1] "Boat and Marine Equipment Theft," summary report of a 1979 National Workshop (University of Rhode Island Marine Advisory Service, Narragansett, R.I., 1980) p. 5.

[2] U.S. Coast Guard, Commandants Instruction #1620.3 (June 24, 1977).

[3] *National Automobile Theft Bureau Passenger Vehicle Identification Manual,* 52d annual ed. (1981) pp. 172–173.

Personnel

# Law Enforcement Marital Relationships: A Positive Approach

By
JOHN G. STRATTON, Ph. D.
*Director*
*Psychological Services*
*Los Angeles County Sheriff's Department*
and
BARBARA TRACY STRATTON, M.A., M.S.
*Marriage, Family, and Child Counselor*
*Los Angeles, Calif.*

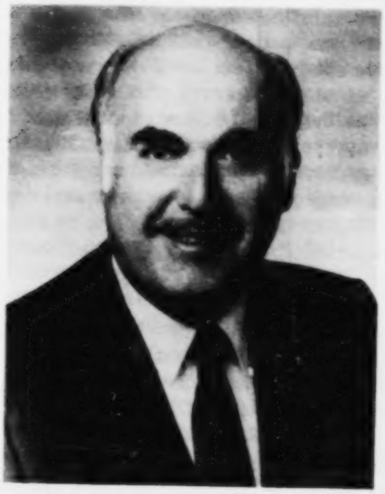
Many law enforcement couples have shared with us their joys and difficulties, along with methods they have used to weather successfully trying times in their relationships. We have also gained knowledge in this area by observing both our parents and others. It is our desire to impart some of this knowledge to you.

Initially, we would like to dispel a few myths! We know of no evidence to support the popular notion that the divorce rate in police marriages is higher than other occupations. Although we have read and heard that police have a higher divorce rate than others, a review of the literature failed to produce any evidence for this belief. In addition, we checked with many authorities in law enforcement and they, too, did not know of any studies to support this common misconception. Often, statements or reports claiming higher divorce rates for law enforcement are based on supposition rather than fact. What may be occurring is that law enforcement personnel who associate mainly with others in the same profession see or hear of officers getting divorced or having marital problems. As a result, those getting divorced or having problems can be seen as representing the majority, if not *all* police. However, if they were to consider divorce rates in other occupational groups, they might discover ratios similar to those in law enforcement. A police officer from a medium-sized city reported that 85 percent of the officers in his department were divorced. When questioned as to how he knew this, he responded, "We keep records, I guess." Records like that are difficult, if not impossible, to keep.

What is meant by divorce rates? Often, in discussing divorce statistics, researchers compare apples and oranges. Municipalities and other governmental bodies consider divorce rates as the ratio of divorces to marriages in any given year. For example, if a municipality had 87 divorces and 100 marriages in a year, its divorce rate would be 87 percent for that year. Different marriages and people are used for comparison in reaching a divorce rate. Using these criteria for divorce, the rate in Los Angeles County for 1979 was between 80 and 90 percent![1] Divorce rates by others are determined by examining the number of people who are married and subsequently divorced within an occupation. These statistics are difficult to determine in any profession because of inaccurate or outdated records. However, estimates are that in the 1980's, 40 to 60 percent of all marriages will end in divorce. Law enforcement divorces are not higher than the above statistics.

Police and their spouses are people—members of society. As members of society and like others in various professions, they experience divorce. There is no question police work is stressful. However, it is often forgotten

*Dr. and Mrs. Stratton*



*Sherman Block*
*Sheriff*

that police possess, to a higher degree than most, traditional American values: Dedication to improving society, commitment to family, and freedom for all law-abiding citizens. People in various occupations, whether they be doctors, lawyers, businessmen, or construction workers, seem to have as many problems, divorces, and permanent marriages as those in law enforcement. At a recent Los Angeles County Sheriff's Department Retirement Program for prospective retirees and spouses, a very small minority were divorced. The majority had been in law enforcement for over 20 years and were still married.

**Communication**

A priority in any relationship is communication. To have communication there must be time to be with each other. In our busy world, whether it be a result of both partners working, getting the kids from one activity to another, or living different schedules because of shift work, time together can become almost impossible. Unless communication and time to be alone, time together as a couple, and time as a family is made a priority, it may not happen. We can end up like one couple who leaves notes to each other on the refrigerator and may not see each other for more than a week at a time. This may be overstating the case, but how much time have you and your spouse spent together or with your family?

*U.S. News and World Report* (1975) did a study on the amount of time spent on communication between the average American couple, not while they were watching television or during commercials when they were saying, "Get me a beer," or, "How was your day in 30 seconds or less," but listening and paying attention to each other. They discovered that married couples average about 30 minutes a week in involved communication. Some believe that's too high an estimate, while others believe it is too much time dedicated to communication.

Communication is important for many reasons. The way we are today, our thoughts, values, wants, and needs are different now than they were a year, 5 years, or 10 years ago, and they will change in the future.

Consider for a moment what is important and unimportant to you, valued and not valued—your life issues. Now think back to 15 years, 10 years, or even 5 years ago and examine what you valued and thought was important. For example, think of your values in the 1960's—your thoughts about the Vietnam War, "hippies," the civil rights movement, busing, college unrest, etc. For most people over 30 years of age, the day John F. Kennedy was assassinated will always be remembered, and quite possibly you can remember specifically how you heard of the assassination. Also, remember what your values were and begin to think about the changes you've experienced since then, both individually and in your relationship with others. Unless these changes are communicated, a couple can grow apart and become strangers to each other. Consider the normal course of relationships. Initially, there are two complete, separate, and

**"Without communication or the desire to reevaluate continually and understand each other . . . many relationships break or crumble."**

unique human beings who, for a variety of reasons, are attracted to each other. After this initial attraction, each person still possesses his own individuality, but they begin to share more of themselves and get to know each other better through their communication of feelings, thoughts, and ideas. As their relationship grows and they continue to spend more time together discussing values, attitudes, beliefs, likes, and dislikes, the two either become more interested in each other or they grow apart. They begin to talk more in terms of "we" or "us," while still staying in touch with their own individuality. After further communication and time together, the couple may feel that they know each other totally—they understand each other in all ways. Their wants and needs are compatible—they are able to fulfill the other partner's wants and needs. This closeness and deep understanding are the result of the communication between the two. Because they understand each other so well, the couple decides to marry.

However, after the marriage day, the amount and level of communication may decrease, and after a period of time, become nonexistent. At times, it appears as though the partners assume their knowledge of each other, including knowing and understanding the other's values, wants, and needs, will stay the same forever. They forget that the values that were similar at the beginning of the relationship change for a variety of reasons, such as the influence of social mores, worklife, social life, and all they encounter in their daily experiences. These important and very different changes must be communicated to the spouse or there is a tendency for the relationship to grow apart and be dull, unfulfilling, and lifeless.

When couples seek counseling, it is initially awkward for everyone—they have never done this before! Generally, they face us and talk about each other. Rather than have them talk to us about each other, we ask them to talk to their spouse. First, we ask them to turn their chairs to face each other and not say anything, just look. Comments such as "Do we really have to do this?" "Boy, this is difficult," or "You aren't bad-looking after all" are heard. We may ask them to share feelings. Sometimes we hear, "I really love you," "I'm sad and want to be closer to you," "We've really grown apart," and others.

We may then ask them to share their wants and needs with each other. Sometimes spouses do not realize they can have desires and needs in a relationship and expect to have them satisfied. At times, when a spouse will state his/her desires, replies include comments such as, "Do you really want that!" "That's important to you?" or "I want that too!" Couples who have been married 10 years appear totally shocked by the wants and needs of the person they love and married. They find it difficult to believe what they hear from their loved one.

A final example is that of Harry and Peggy S., who were in their late twenties and were married for 7 years when we first met them. Their decision to marry had developed naturally from their common values and interests and their deep love for each other. It was all so easy—they considered themselves to be a "perfect match."

The young couple could envision their lifestyle for at least the next 10 years and were in perfect accord on what they wanted—all the conveniences, flash, and splendor that goes with "keeping up with the Joneses" in our modern society. To accomplish this, they would both work for at least 3 years before having their first baby. To supplement Harry's income in case of emergency, Peggy would work until the 6th month of pregnancy.

Initially, all went according to plan. After the baby's birth, things seemed fine for a year or so. The funds for "extras" were somewhat limited, but they were financially stable. Although Officer Harry's income steadily increased and his position was secure within the department, he began to fret about providing for his wife and child in the manner to which they had grown accustomed. Harry felt compelled to keep up with his peers, who had no children and two incomes. Without consulting his wife, he began to work overtime occasionally for additional money. Soon, he found himself working two shifts a day and because of the long distance between home and station, it often made more sense to sleep in his camper truck, parked in the station parking lot. So now Peggy was home alone at night while he slept alone in his truck.

As pressure between the couple mounted, they sought counseling. After the initial introductions and general conversation to help them feel comfortable, Harry stated his wants. "I want to provide my wife and child with a very satisfactory lifestyle." Peggy burst out, "I don't give a damn about expensive clothes, a beautiful home, a nice car, swimming pool, and a boat, or anything else that may impress others. I want to spend more time with you. I want you to hold me, touch me, I want to *be* with you." Barely listening, Harry angrily interrupted, "What's gotten into you? We both knew exactly what we wanted, didn't we?"

Tragedies like this can and do occur to couples and families. When either spouse presumes that there will be no changes in the relationship, their values, wants, or needs, there is bound to be less communication and more problems.

Without communication or the desire to reevaluate continually and understand each other, without attention to exploring our problems, many relationships break or crumble.

In discussing communication, time has been emphasized. Even more important than the quantity of communication is the *quality* of what we communicate. Often, individuals get caught up in verbiage. They believe they must tell each and every detail of an event or discuss nothing at all. Although the events—positive or negative—an officer experiences at work do not have to be communicated in detail to the spouse, he could communicate how the day was. Statements of feelings, such as, "I am bushed," "I am tired, worn out," "I am feeling good," "I had a rough day," or "I am really sad," tell a great deal. These statements often communicate more about the individual and are often more important than the details of the day.

## Attitudes in Relationships

A major component of our life and relationships is the attitude with which we approach them. A positive attitude can be seen in the following saying: "As we ramble through life, whatever our goal, keep your eye upon the donut and not upon the hole." Life, like a donut, is very rich and good. There does exist the hole, but it's not the major part. We have to be careful not to fall into it. When we do, we can approach our difficulties with a positive attitude expressed by the view, "If life gives you lemons, make lemonade."

An approach that sees relationships like life, with ups and downs, good and bad, happy and sad times, emphasizing the belief that the relationship is important and can be successful is much more positive than a position of "if it doesn't work, I'll get out—it's not important anyway." One's attitude and view of relationships and life greatly affect the end results.

A spouse's attitude toward his partner also affects the relationship. A spouse who is seen as a special, valuable, and important person will add more to the relationship than one who is seen as unimportant. At times, officers forget that spouses who are not in law enforcement can add a perspective they may not consider, insights they do not have, a balance to some of their law and order dominated views, and different ways to understand, approach, and relate to their children. Our partners help, contribute, and add to us. Spouses love us and make us what we are, as we do them.

## Qualities of Relationships

We have talked to, counseled, and worked with a wide spectrum of law enforcement couples—young couples who have just entered the academy, those who marry after an officer is already in the department, those anticipating retirement, and retired couples.

In lecturing to couples beginning the academy, we generally talk about what could happen in law enforcement relationships—or any relationship for that matter—and feel sure those young bright-eyed couples are saying to themselves, "That will never happen to us; we're different."

We have worked with couples in the midst of problems at various stages in law enforcement careers and in their relationship. Some weather the storm; others experience too much turbulence and decide to separate.

Our belief is that for every successful, competent, caring police officer, there is an equally successful, competent, and caring spouse. These couples have the insight, the conviction, and the courage to make their marriages work—to tread through the struggles and to enjoy the excitement, love, and happiness in their relationships. Both contribute to each other, their marriage, children, other people, and society as a whole.

**". . . for every successful, competent, caring police officer, there is an equally successful, competent, and caring spouse."**

### Love

Love, being in love, staying loved, working at love, and nurturing a relationship take as much work and determination as a career, running a house, or raising children, but the rewards are many. However, there are days that being involved with anyone either directly or indirectly connected with law enforcement is difficult at best.

It is difficult to love someone who, when he leaves his position of authority and arrives home, forgets that when he walks through the door, he is *not* the boss. This is especially difficult when he tries to treat his spouse like a secretary, requesting that she wait on him while he sits in front of the TV.

It is difficult to love someone who has been in a position of telling others what to do and how to be and then continues this lecture at home. He may continue to believe that he's the expert and begin lecturing on how to clean the house, cook dinner, or have a better relationship. At this time, the "boss" may need to be reminded that he is at home and not at work. Some spouses suggest ignoring him the first hour. Another approach is for the couple to take a walk or get out of the house for awhile to allow him to defuse all the day's happenings. Perhaps then they can share again more equally.

It can be especially difficult to love someone when he treats his spouse and her world as less important than his. Police officers deal with crises—life and death situations—and as a result can treat everybody else, including their spouse, as if police work is the only thing that is important and whatever anybody else does is meaningless. Even though the job is difficult and demanding, the spouse may believe, because of the officer's behavior, that she has to be in a crisis before the officer will talk to her, acknowledge her, or even listen to her.

In our own particular case, we have established a code that signals John that it's time for him to listen. One week after several emergencies occurred at the house, Barbara was frustrated because she couldn't get through to John. Finally she commented that she would have to call his answering service and tell them that Dr. Stratton's wife was commiting suicide. When they "beeped" him, he would give at least 1 hour of his time to listen to her.

Now, when she says, "answering service" or "suicide," John listens. Sometimes Barbara threatens to call the sheriff and tell him that "Stratton isn't practicing what he preaches." She knows then that John realizes he must listen.

It can also be difficult to love an officer when he forgets that men and women are different sexually. It is difficult to love someone when he comes home wired, after an adrenalin-filled shift or from an emergency at 3:00 a.m., flips on the lights, and concludes that this is the perfect time to make love, even though his spouse may be sound asleep. Occasionally, this may be acceptable, but a steady habit of it can cause problems.

Yes, there are days that being married to a police officer is difficult. There are also weeks, months, and years that can be exciting, rewarding, and totally fulfilling.

There is value in loving and being loved by someone who has purpose in life and who helps people. Law enforcement officers have a sense of direction and dedication and want to make the world a better place to live. They believe in tradition and their families, and at times they need support, patience, and understanding from their wives and children. It is important that they share that sense of fulfillment and purpose in life with their loved ones.

### Suggestions

We have emphasized the importance of communication. For over a year we both worked within a few miles of each other, and as a result, drove to and from work together. We liked this time together, but never realized how important it was until one of our work locations changed.

While driving home, we had a half hour together with no interruptions and were able to discuss all the day's happenings, problems, feelings, etc. When we arrived home we were ready to be with the kids, prepare food, and handle other responsibilities. However, when this ceased, we arrived home, dealt with the children, and did household chores with no time to talk with each other.

It took losing this time together to make us realize how important the time was to us. Because we believe in the value of having time to "let down" or defuse, we developed an alternate method. We exercise now in the evening—jogging, walking, bicycling—

sometimes by ourselves, sometimes with the children. Though we preferred the time driving to and from work, this approach allows for diffusion and discussion of the day's activities for us and the children. The conversations we have at these times are different and easier than if we make a special effort to talk when we have other pressing responsibilities. This time is important. Communication is a two-way street in which each partner must be willing to express feelings, thoughts, ideas, etc.

The value of sharing, and the power we each have to help each other through sharing, cannot be over-estimated. We help each other by sharing. Many of the things we experience are similar. Just to know someone has had similar difficulties and survived or has found a successful way to handle a problem can be most helpful.

This type of sharing can be accomplished in numerous ways. A frank discussion with another spouse, whether it be among officers or their spouses, is one type of sharing. Workshops, seminars, 1-day programs, or meetings of small groups and associations enable law enforcement couples to discuss common problems and find solutions to these problems. The sharing of our experiences and methods of handling difficulties is very powerful and influential in helping others.

We have been fortunate to have people share their difficulties, as well as their enjoyable times. They let us understand their struggles and how they handled them to make their law enforcement relationships better. This has helped us to find ways to improve our relationship. Knowing how other couples have coped with similar problems can assist us in coping with ours. Each spouse can also talk, listen, and learn from the other.

It is essential that each individual value himself—we are all important. If you don't believe you are valuable, there is little we can do to change that belief. The change must come in your attitude and feelings about yourself. These positive attitudes and feelings must also extend to your spouse for a healthy relationship.

In the Los Angeles County Sheriff's Department, special emphasis is focused on the employee and his family. We believe in the interrelationship of one's home, work, and social life. If an individual is happy and content at home, it is likely that he will be more effective at work and vice versa. We provide services to our officers and their families because we know if things are unsettled at home, the officer's work suffers.

The recognition of the importance of the spouse is evidenced by our spouses program, which has been replicated in over 100 departments throughout the United States. This only emphasizes the value attributed to the spouse by the sheriff's department. Employees are paramount to the organization. Any program that benefits the employee and/or the spouse, whether it be programs such as confidential counseling for work or personal problems, alcoholism programs, spouses programs, retirement seminars, workshops or other approaches, can only add to an officer's successful career.

## Conclusion

Our emphasis has been on the positive—what we can do to improve relationships when difficulties arise. Hopefully, by sharing with others, we can all develop new ideas, concepts, and approaches that can add to and improve our relationships. If successful, we will be involved in a relationship that allows each partner to continue to grow into a new person with whom the other can continually fall in love. **FBI**

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**Footnote**

[1] J. G. Stratton, and D. A. Parker, "Los Angeles County Sheriff's Department Stress Assessment Survey" (Unpublished manuscript, 1981).

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## Correction

In the article "Obtaining the Bitemark Impression (Mold) From Skin: A Technique for Evidence Preservation," published in the January 1982, issue of the FBI Law Enforcement Bulletin, the term "dye stone" was incorrectly spelled. The term should actually have read "die stone."

# Coupon Fraud:

## Profiting from "Cents-Off" Coupons

By
KATHLEEN McCHESNEY
*Special Agent*
*Federal Bureau of Investigation*
*San Francisco, Calif.*

8535
STORE COUPON
35¢ ON TWO
0669 SA
30752
STORE COUPON
25¢ off on two
20
Sa
20¢
TAKE
STORE COUPON
SAVE 25¢
49000 102472
18¢
40¢
12¢
TWO BOXES
OFF TWO
FREE
SOU
STORE COUPON
Save 50¢ on a pack

In 1979, a California entrepreneur created a bread mix and produced 10,000 packages of his product to test the market. To create public awareness of the mix, he placed advertisements in local newspapers. These advertisements included a "cents-off" coupon entitling the purchaser of the product to receive a portion of the purchase price back from the retailer at the time of sale. When the number of coupons redeemed exceeded double the number of packages of the item manufactured, the businessman realized he had become another victim of fraudulent coupon redemption—a scheme that can involve consumers, grocers, truckdrivers, and redemption "middlemen."

All levels of law enforcement are involved in the fight against fraudulent coupon redemption which can include fraud by trick or deceit, fraud by wire, mail fraud, grand theft, and theft from interstate shipment. Coupon abuse is possible in any part of the country where merchants redeem coupons.

### The Coupon System

Most major manufacturers of food and household products use "cents-off" coupons as a method of advertising. Over 80 billion coupons were printed in 1980 in an attempt to encourage consumers to buy specific products.[1] According to marketing surveys, 80 percent of shoppers occasionally use "cents-off" coupons, and some retail outlets encourage coupon trading among customers.[2]

*Special Agent McChesney*

Of the 80 billion coupons printed annually, it is expected that approximately 20 percent will be redeemed.[3] The average face value of a coupon is about 18 cents, making coupon fraud a multimillion dollar business that presents the opportunity for illegal redemption at various levels of the process.

Until recently, law enforcement had little involvement in this type of fraud. In 1980 and 1981, 19 individuals involved in coupon fraud operations were convicted in San Diego and San Francisco as a result of FBI and Postal Service investigations. The subjects were convicted of various counts of mail fraud, conspiracy, and receiving stolen goods in interstate commerce. Several other investigations are currently in progress throughout the country.

Coupons are generally printed in newspapers or magazines but are also printed as "freestanding inserts"—glossy pages of coupons and advertisements placed inside a newspaper. Less frequently, coupons are obtained through costly direct mailing from manufacturer to consumer or from inpackage distribution, where the consumer finds a "cents-off" coupon inside the packaging for future purchases of the product.

In the legitimate use of "cents-off" coupons, the consumer purchases a newspaper or magazine, removes the coupon, and takes it to the retailer, where it is remitted at the time of purchase of the product depicted on the coupon. Some coupons are dated, and it is the responsibility of the retailer to insure that the coupon presented has not expired and that it is presented with the purchase of the required item. Nearly all coupons contain directions from the manufacturer to the retailer, indicating the method of redemption and a warning that any use of the coupon other than in combination with the purchase of the specified product constitutes fraud.

While some manufacturers will not process their own coupons, others allow retailers to submit the coupons directly to them for redemption. The usual method for retailer redemption, however, is to separate the coupons by manufacturer or price and submit them to a coupon redemption center or clearinghouse.

There are approximately 70 coupon redemption centers in the United States. The bulk of these centers' business is with retailers and manufacturers by mail. Upon receipt, the coupon is processed to determine the appropriate payment to the retailer. The retailer is then paid the face value of all legitimate coupons submitted, plus 7 cents per coupon for handling. Deductions are made for rejected coupons, if any, from previous submissions of the particular retailer.

Coupons are also checked at the clearinghouses for signs of fraud, such as submissions of large quantities of a particular coupon, all appearing to be in mint condition or "gang cut." Mint condition coupons are those which are clean and unwrinkled, not typical of the coupon which has been in a consumer's wallet or purse for some time. "Gang cut" coupons are identical coupons that have been piled on top of one another and cut simultaneously with the same apparatus.

**"Miscounting, overpayment, and ignorance of the signs of fraudulent coupon redemption can produce greater profit for the center or its employees."**

Coupon redemption centers sort submitted coupons, and in some instances, forward them to manufacturers or make them available for manufacturer review. Manufacturers may refuse to pay redemption centers for coupons which they believe were gang cut, in mint condition, expired, counterfeit, or submitted by a retailer who does not stock the manufacturer's product.

### Participants of Fraudulent Coupon Redemption

Consumers participate in coupon fraud by submitting expired coupons when purchasing products or by redeeming coupons for items they have not purchased.

Retailers participate in coupon fraud in a number of ways. They may "buy" coupons from consumers or magazine and newspaper vendors and then redeem them with manufacturers. The retailer may also accept coupons for products they do not carry or accept coupons for one product while actually selling a competitor's product.

Coupon "middlemen" sort, count, package, and mail a retailer's coupons to manufacturers or coupon redemption centers. Middlemen charge a fee for their services and may work for one or more stores.

Providing this service for retailers is not illegal. What constitutes fraud is "padding" the coupon submission—taking coupons from magazines or newspapers and combining them with coupons used legitimately by consumers to make a larger submission to the coupon redemption center. In some cases, middlemen buy or steal large quantities of coupons and submit those in place of legitimately used coupons.

Coupon redemption centers and manufacturers will only mail coupon payments to retailers at the street address of the market, precluding middlemen or others from setting up false-front stores for submission purposes. Middlemen receive their fees from the retailer once the payment has been received from the coupon redemption center or manufacturer.

Newspaper and magazine companies do not sell large quantities of papers or magazines to individuals; however, some newspaper truckdrivers have sold as many as 10,000 newspapers per week to coupon middlemen. A truckdriver who steals 10,000 newspapers and sells them for 20 cents per copy receives a tax-free profit of $2,000. The sale of freestanding coupon inserts, which generally contain coupons worth $5.00, amounts to a 25-percent profit per insert.

The opportunity to participate in coupon fraud also exists at the level of the coupon redemption center. Miscounting, overpayment, and ignorance of the signs of fraudulent coupon redemption can produce greater profit for the center or its employees. Payments are sometimes made "under the table" to center personnel from coupon middlemen who want their coupons to be redeemed without question.

In 1980, a joint FBI/Postal Service investigation conducted in San Francisco uncovered four major fraudulent coupon redemption operations. Each of the operations, headed by coupon middlemen, operated in a similar manner.

The middlemen, who were former grocers, obtained large quantities of coupons or coupon inserts from newspapers and magazines. They then hired individuals to clip and sort the coupons. The cutters and sorters were usually persons who did not speak English or understand the coupon redemption system. The middlemen then made arrangements with various grocers to use the names of their stores to submit coupons to various redemption centers. Occasionally, middlemen submitted coupons provided by the grocer, along with coupons from the middleman's source of supply, to coupon redemption centers. In most instances, however, the middleman was the sole provider of the coupons submitted.

The middlemen made several submissions of coupons, generally by mail, to various redemption centers each week, keeping records of the dates and volume of submissions from each store to each coupon redemption center. This process allowed the maximum number of submissions, while using as many coupon redemption centers as

*These clipped and sorted coupons were found in a subject's home during the execution of a search warrant. Shelves were installed for the purpose of holding coupons.*

CHALLENGE
MILK
ER·WINE
OODS
ALMADEN
15¢ SALE
SEAGRAM'S 7
SEAGRAM'S GIN
OPEN

*One of hundreds of "mom and pop" markets in San Francisco involved in the fraudulent redemption of coupons. Coupons submitted from this store greatly exceeded the normal number of coupons that should be submitted from a store this size.*

possible to achieve a higher rate of return. One middleman handled as many as 80 stores at one time, redeeming coupons worth $350.00 several times per week in the names of particular retailers. When the coupon redemption centers mailed the payment to the market, the middleman would take his share of the check in cash.

*These newspapers, stripped of coupons, were sold in bulk to independent paper companies.*

00024
24 Rolls
375 Sq.Ft.

### Controlling Coupon Fraud

The security of coupons is the starting point for eliminating coupon fraud. Coupons stolen from printers, truckdrivers, and newspaper and magazine companies are generally stolen in large enough quantities to generate profit for middlemen and grocers. Stricter accountability and control of coupons, particularly free standing inserts, have been the result of coupon investigations throughout the country.

Manufacturers are attempting to reduce the problem of coupon fraud by developing new methods to detect and prevent counterfeit coupons, making inspections of retailers who redeem their coupons, and by verifying stock purchases of coupons redeemed.

Coupons more difficult to obtain are less likely to be fraudulently redeemed. Coupons found inside packaging are most often legitimately redeemed. While this is not the most popular method for coupon advertising, it is a good way to increase the number of bonafide redemptions.

Retailers can help curb coupon misuse by submitting coupons used only in legitimate purchases at their stores and by dealing only with reputable middlemen. Some stores require clerks to initial and date each coupon as they are remitted. This assists in pinpointing unusual redemptions by particular clerks.

Consumers may report coupon misuse to manufacturers or law enforcement agencies. Many successful investigations may be credited to cooperation between investigative agencies at the Federal and local levels. Since fraudulent redemption of coupons may involve both State and Federal violations simultaneously, it is important to conduct joint investigations rather than leaving the entire investigative burden on a single agency or department. With the support of the consumers and manufacturers who bear the cost of coupon fraud, and through aggressive investigation and prosecution, the outlook is good for making fraudulent redemption schemes a thing of the past.

**FBI**

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**Footnotes**

[1] "Why is this Market Down on Coupons", *San Mateo Times*, June 3, 1980.

[2] "Cashing in at the Checkout," (New York) *Stonesong Press*, 1979.

[3] *San Mateo Times*, June 3, 1980.

Legal Matters

# Cults: A Conflict Between Religious Liberty and Involuntary Servitude?

Mulholland

## (Part II)

By
ORLIN D. LUCKSTED
and
D. F. MARTELL*
*Special Agents*
*Legal Instructors*
*Federal Bureau of Investigation*
*Detroit, Mich.*

*Now assigned to FBI Headquarters

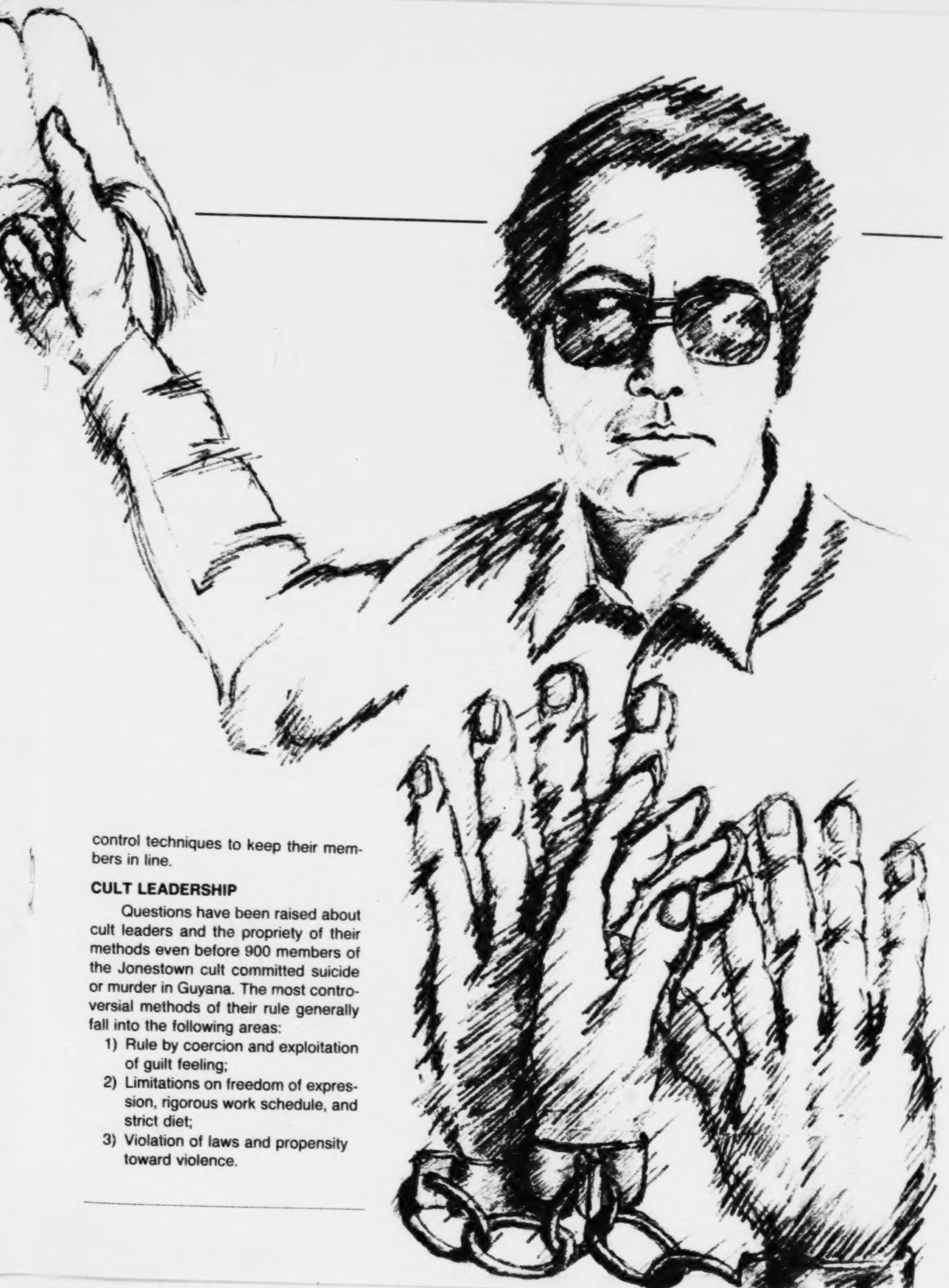
Part I of this article discussed the first amendment guarantee of freedom of religion and the constitutionality of Government interference into the actions of religiously motivated groups. Part II examines certain cult activities and the sometimes detrimental effects these activities have on the public.

### Cult Activities and Public Reaction

As our society has grown more complex and competitive, many young people have sought refuge in the use of psychedelic drugs and in the pursuit of unorthodox ideology. This phenomenon has helped to encourage the growth of various cult groups all over the country. These groups claim to have the answer to the world's problems and to offer an escape mechanism from our "inhumane," "materialistic" society. People who join these groups no longer have to wonder what to do in life or explain why they are not doing well. Some cult members can rise to positions of considerable power, living in luxury, while exercising great authority over new members. However, many excult members, writers, and reporters have discovered disturbing characteristics common to many of these cults.[33] Among these characteristics are:

1) An authoritarian, charismatic leader who claims to have an exclusive revelation about God or reality. He exerts complete authority over the cult, requiring unquestioning obedience by his followers to his strict rules. Many such edicts have resulted in harm to his followers and society.
2) The leader becomes a substitute parent, creating a family or communal living arrangement by establishing a controlled environment through a variety of behavior-control techniques. These techniques purposely destroy old family ties and social norms by placing the new cult member in a setting isolated from family and friends, under constant cult supervision and peer pressure.
3) New members are recruited primarily from the young, intelligent, affluent, and idealistic. Often, the recruitment process is deceptive and focuses on troubled youths by indoctrination into cult thinking by cult members. This process begins with the establishment of interpersonal bonds and ends with the systematic destruction of the recruit's original identity.

Some have argued that these characteristics are not unique to cults, but are often found in strictly organized religions or military schools. There are important differences, however. In cults, the loyalty of cult members is to their individual leader, not to a religious institutional philosophy. Such loyalty often leads the cult to believe it is above the law. Moreover, there is considerable evidence that many cults do not confine their activities to ordinary religious pursuits, emphasizing recruitment of other members and solicitation of money rather than prayer. Finally, some cults are reportedly using mind-



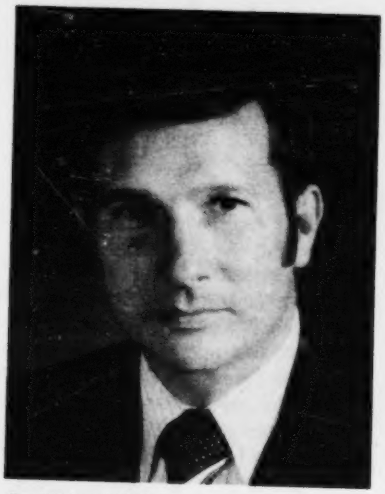
control techniques to keep their members in line.

**CULT LEADERSHIP**

Questions have been raised about cult leaders and the propriety of their methods even before 900 members of the Jonestown cult committed suicide or murder in Guyana. The most controversial methods of their rule generally fall into the following areas:

1) Rule by coercion and exploitation of guilt feeling;
2) Limitations on freedom of expression, rigorous work schedule, and strict diet;
3) Violation of laws and propensity toward violence.

*Special Agent Lucksted*



*Special Agent Martell*

## Rule by Coercion and Guilt

In 1976, the Vermont Senate Committee for the Investigation of Alleged, Deceptive, Fraudulent and Criminal Practices of Various Organizations in the State heard the testimony of a number of psychologists and psychiatrists regarding mental impairment of cult members. Such expert testimony characterized the cult members' indoctrination as a forced rejection of the past and an intense concentration on the present in supernatural terms.[34] It was revealed that reality for the cult member consisted of a struggle between good and evil with dependence on the peer group within the cult for support.[35]

Testimony also revealed that cult leaders would warn the members that if they left the cult, God would punish them or they would be killed within the year. One former member testified that she was told that if she notified her parents or left the cult, she would doom her parents, brothers, and sisters to hell.[36]

A similar inquiry was made by the attorney general of New York. He ordered an 18-month investigation of the Children of God in response to parental complaints of coercion by that sect upon their children. This inquiry revealed an indoctrination process similar to that disclosed in the Vermont investigation.

Both inquiries determined that cult leaders implant in the cult member's mind a preoccupation with the supernatural and indoctrinate the member with the consequences of breaking from the cult. This has driven some cult members to irrational behavior. Residents of Duchess County, N.Y., site of Reverend Sun Myung Moon's Unification Church training centers, have noted many cult members with psychotic disorders and many who have attempted suicide, one of which was successful, being admitted for treatment in local hospitals.[37]

Other lawsuits have shed further light on cult coercion. A successful malicious prosecution case involving the Church of Scientology of California is revealing.[38] In this case, a member resigned from the church without obtaining permission and took with him financial statements from the church safe and turned them over to the IRS. Church leaders then made a complaint to the police that he had stolen funds from the safe. At trial, the plaintiff introduced an exhibit reflecting the written policy directives of L. Ron Hubbard, founder of the Church of Scientology. Hubbard's policy (to be enforced against "enemies" or "suppressive persons" of the church) stated that such persons "may be deprived of property or injured by any means by any Scientologist. . . ." (Methods approved were trickery, lawsuits, or lies.) In awarding $50,000 in compensatory damages and $50,000 in punitive damages to the plaintiff, the court found that the church had a policy of "lying and cheating in order to attack its 'enemies'."[39]

Economic motivation is likely to be behind the coercive practices of some cult leaders. Aside from turning in all material wealth in their possession

**"Economic motivation is likely to be behind the coercive practices of some cult leaders."**

when they join the cult, members are forced to solicit donations, recruit other members, and perform menial jobs below their capabilities for long hours. If their efforts fail to meet their quotas, they must spend their evenings in prayer.[40] Money quotas are not small; "Moonies" average $50 to $200 a day.[41] The fact that cult leaders live in luxury while cult members work as many as 12 hours a day does not seem to deter the members from solicitation. Since the cult is legally a religion, all income is tax free.[42]

In *Schuppin* v. *Unification Church,*[43] parents of a cult member in the Unification Church alleged that their daughter was forced to work in "compulsory service." The parents alleged that the cult leadership used constant threats and fear to coerce their daughter to sell merchandise for the cult. The suit failed, however, because the parents could only allege mental restraint, not physical force, on the part of the cult to compel the member to stay within the cult.

### Limitations on Freedom, Strict Diet, and Regimentation

Cult leaders place such limitations on language, thought, and experience that the decisionmaking ability of cult members is reduced to the level that their behavior becomes childlike.[44] Studies of cult members by psychologists and psychiatrists reveal detrimental changes in voice patterns, posture, reading, arithmetic skills, and handwriting.[45] Former scholastic achievers in college reportedly wrote letters of childlike simplicity to their parents.[46]

Questioning of cult philosophy or procedures is equated with influence of the devil. Cult members must let the leaders do all the thinking. In the Krishna cult, no speech or thought is allowed other than in conjunction with teaching or duties.[47] "Moonies" are asked to drop all objections to cult leadership. Statements of Reverend Moon are illustrative.

> "What I wish must be your wish.
> "I am your brain.
> "The whole world is in my hand, and I will conquer and subjugate the world."[48]

Vitamin-deficient diets, lack of sleep, and overwork have resulted in emergency hospital care or even death for cult members.[49] Moreover, some cults teach that medical science and doctors, in particular, are derived from Satan. Illness, therefore, is God's punishment or a sign of spiritual shortcomings.[50]

Prescribed cult medicine is also dangerous. At least two deaths were reported in the Love Family cult from inhaling toluene, an industrial solvent, to achieve "spiritual insight."[51]

In North Webster, Ind., Melvin Creider, leader and founder of the Glory Faith Assembly, a cult which forbade consultation with medical doctors, was the object of public outrage when nine of his followers, two mothers and seven infants, died in childbirth between 1975 and 1978.[52]

### Propensity Toward Violence and Lawbreaking

Because the outside world is frequently equated with Satan, many cult leaders encourage cult members to use any means to advance their goals. In some cases, the cult leader predicts the end of the world through some cataclysmic means, either by man in a world war or by God Himself. Therefore, traditional "moral" rules of society may be disregarded in the service of the leader so that cult members may attain "special power."[53] As a consequence of the above, incidents involving violence or lawbreaking are not uncommon.

A lawyer who successfully sued the Synanon cult in an action charging the cult with brainwashing, kidnaping, and false imprisonment was bitten by a rattlesnake secreted in his mailbox. Synanon's leader and founder, Charles Dederich, was charged with attempted murder and later sentenced to 5 years' probation for his part in this offense.[54]

The House Subcommittee on International Relations found evidence that the Rev. Sun Myung Moon and his Unification Church violated immigration, currency transaction, and tax laws. The Immigration and Naturalization Service (INS) found evidence of the Unification Church using mass marriages as a means of bringing aliens into the United States for fund-raising purposes. Moreover, INS ordered deportation of almost 600 members who were granted visas for religious education and training, but were really soliciting funds and selling on the street.[55]

David Berg, leader of the Children of God cult, decreed prostitution for its female members, holding that women members may seduce wealthy and influential businessmen to "save souls"

**"Former members of cults have reported a variety of behavior-control techniques, other than simple coercion, which have been used by some cults."**

and raise money for the church.[56] Female members were commanded to become "fishers of men" and "happy hookers for Jesus."

Specific acts of cult violence have ranged from excult members being physically harassed and parents being beaten while trying to visit their children in the cult to professionals who opposed cults being threatened with death.[57] Excult members also have reported that while under cult influence, they would have willingly killed their own parents if ordered by their leaders.[58]

Even more disturbing are reports of a growing paramilitarism among some religious cults. Robert M. Press of the *Christian Science Monitor*, in a series of articles on paramilitarism, cited a police search of a ranch in northern California run by a Krishna leader of the International Society for Krishna Consciousness, which search resulted in confiscation of large samples of arms, including AR15's (semiautomatic rifles), shotguns, and several thousand rounds of ammunition.[59]

Other similar incidents have resulted in growing public concern about cult activity. In 1976, a petition was signed by 14,000 citizens calling for an investigation of the Unification Church. Three U.S. senators presided over an informal meeting of 400 persons from 32 States complaining of cult activities. Similar hearings have occurred involving other cults in California (1974) and Vermont (1976). Testimony at these hearings revealed difficulties in separating the sometimes illegal political and criminal activities of cults from their religious beliefs. Accordingly, public opinion toward cults remains divided. Critics like Dr. Flo Conway and Jim Siegelman warn of cult-leader takeovers on a national, even international, level. "Large numbers of people in other countries may be laid open to mind control at the direction of self appointed religious social and political leaders." [60]

On the other hand, some critics voice fears of the widespread concern, even hysteria, on the part of the public. They accuse public protests of cults as "a predictable form of . . . scapegoating, and use of outside agitator, theory to explain away problems." [61] This view shrugs off any potential threat by cults as similar to the anti-Masonic, anti-Catholic, and anti-Mormon literature of a hundred years ago. These critics voice concern more for "overstereotyping" of cults with parallels of McCarthyism in the 1950's.[62]

As a result of these positions, there has been a natural reluctance on the part of some State and Federal authorities to get involved in the fray by prosecuting cult leaders. Unfortunately, this position has placed law enforcement in a quagmire of conflicting direction. Does one prosecute the parent of a cult member when that parent has become involved in a kidnaping for deprograming or should cult leaders be prosecuted for coercive acts against the young?

## BEHAVIOR-CONTROL TECHNIQUES

Former members of cults have reported a variety of behavior-control techniques, other than simple coercion, which have been used by some cults. These techniques are characterized by social isolation of cult members from the family and general public and rejection of traditional social values in their backgrounds.

### Isolation

In most cults, communication with family members is strictly limited, exceptions being recruitment of other members of the family or solicitation of family wealth.[63] Parents naturally become distraught and view the conversion of their offspring as a repudiation of everything they hold dear. Efforts to contact their offspring have sometimes resulted in their children being hidden or in physical beatings by cult guards "protecting" cult members from the satanic influences of their parents.[64] Biblical passages are often cited to the cult member to justify the member's isolation from the family.[65]

### Indoctrination and Isolation

Total isolation from the outside world, particularly from access to the communication media, is accompanied by an intense indoctrination. Former cult members speak of chanting and self-induced trancelike states,[66] being constantly on the move, living on little sleep, and eating low protein diets.[67] They are instructed to follow orders without question. Some change their names, shave their hair, even change their way of telling time,[68] all in an effort to destroy systematically their original identities.

The experience of a reporter who was with the Moon cult for 3 days is illustrative. As reported in *The Congressional Record*, the reporter endured 17-hour days of lectures followed by songs, prayers, games, and exercises, and then more songs and prayers.

> "The assault on our brains continued without let up. Over and over we repeated, 'Please father, I pray that our brothers will open their hearts and accept what they have been told.' Then the prayers would go straight into a song: Father, make me a rainbow to bridge old and new. Father make me a gateway for many to come through. . . . Father, make me a prism held in your hand.
>
> "I felt myself being gripped by strange tensions. Everywhere I looked, I saw moonies watching us with those fixed smiles and blank eyes. . . . by Sunday my head was swimming in the non-stop verbal barrage, my nerves were shot, my muscles ached. I began to realize the meaning of brainwashing." [69]

Despite his short stay of 3 days, the reporter experienced such extreme anxiety that he was forced to request to be relieved of his assignment.

Lack of sleep, inadequate diet, and excessive regimentation combine to form what observers and physicians describe as a robotlike appearance of cult members. The finding of the N.Y. attorney general's investigation into the Children of God cult is typical. "Virtually every parent testified his child appeared drugged, in a trance, a hypnotic state after joining the Children of God." [70]

Distraught parents have brought suits against cults alleging that their children have become involved with religious organizations that place psychological pressure on the children, causing impairment of their physical and mental health and loss of their free will. In a recent conservator suit, wherein the parents of five adult children sought temporary custody of their children for 30 days, an excult member summarized the techniques of the Unification Church:

1) A very strong isolation of the individual from his home, friends, and even his own mind.
2) A completely structured program from 7:00 a.m. to 12:30 a.m.
3) Every single activity a person engaged in was done by a group, and a person was given no time to himself whatsoever.
4) An intense schedule and a deluge of religious concepts which left the participant confused and too fatigued at the end of the day to reflect on the day's activities and lectures.
5) A limited amount of sleep and food which left everyone sluggish.
6) The inculcation of a feeling of personal guilt if the participant doubted or failed to follow the teachings.[71]

A psychiatrist and a psychologist examined the five children and found:

1) They all suffered from a gross lack of information regarding current events.
2) They all showed a moderate degree of memory impairment, especially about their childhoods.
3) They were emotionally frozen in an inappropriate childlike smile to all input, whether it be hostile or otherwise.
4) They were all wide-eyed, had short attention spans, and a decreased ability to concentrate.
5) They had very little concern for previous and future personal goals; they were paranoid about previous relationships.[72]

The psychiatrist then stated the symptoms were the result of "coercive persuasion," by which he meant a series of techniques similar to those used against U.S. prisoners of war in Korea and Vietnam, more commonly referred to as "brainwashing."

Similar observations have been made by Dr. John G. Clark, a psychiatrist who summarized his examination of over 60 former members of cults, including members of cults other than Children of God and Unification Church.

> "There is a sudden conversion through aggressive and skillful manipulation of a naive subject who is passing through or has been caused to enter a susceptible state of mind. Through highly programmed behavioral control techniques and in a controlled environment, the subject's attention is narrowed and focused to the point of becoming a trance. *As a result, the convert becomes dependent on this new environment for definitions of reality* . . . basic controls of the central nervous system become altered, menstrual periods may stop, beard growth is slowed." [73] (emphasis added)

## Psychology of Excult Members

The degree of psychological trauma cults inflict upon their members seems directly related to the amount of time the cult spends in mind-control rituals.

A recent study of excult members by Conway and Siegelman revealed most of the long term psychological damage inflicted upon members appears to be done in the first few months of indoctrination by the cult.[74]

Effects of cult membership are longlasting. Dr. M. T. Singer in examining former cult members determined in her studies a ". . . slippage into dissociative states, severe incapacity to make decisions and related extreme

**". . . certain cult behavior . . . appears to result in substantial harm to society and this outweighs their first amendment protection."**

suggestibility."[75] She believed this was derived from the effects of behavior-conditioning practices on especially susceptible persons. She found her subjects taking much time and energy making simple decisions, like choosing socks or deciding whether to cook or sleep.

**Recruitment and Indoctrination**

An examination of cult recruiting and indoctrination methods is revealing. Most cults recruit members in their teens when prospective members are young, impressionable, and troubled.[76] In a recent case, an adult daughter sued her parents for false imprisonment when they hired a deprogramer to disassociate her from The Way cult.[77] The defendant's parents introduced a publication by The Way which was a guide instructing Way recruiters how to recruit more members. The parents were attempting to show that their fears for their daughter's physical and emotional well-being were firmly based, prompting her deprograming. The publication, "The 'How' of Door to Door Witnessing," instructed the recruiters to focus on the "hungry" and on "individuals whose resistance is temporarily lowered because of loneliness, worry over exams, or other adolescent crises."[78]

Children of God recruiters frequent hangouts at university counseling centers, where they find troubled and vulnerable youths.[79] The Unification Church focuses on university freshmen and seniors, believing them to be anxious and insecure.[80]

Even more disturbing is the fraudulent and deceptive practice of some cults to hide their recruitment purpose behind front groups or social issues, like the betterment of mankind, ecology, or morality.[81] Krishna members have informed the public that they are collecting for a "world relief program."[82] The Unification Church sponsored a "Tel Aviv Quarter Concern," soliciting funds from the Jewish-concern community under the guise of a Jewish charity.[83]

At the end of the initial encounter with the cult recruiter, the potential recruit is encouraged to join members at a retreat. The "victim" in our second kidnaping for deprograming in part I of this article was originally approached in high school when he was invited to attend "free" concerts, lectures, and meetings. At subsequent meetings, the indoctrination process intensified and an interpersonal bond developed between him and cult members.

The methods of establishing this interpersonal bond are many and varied. A chronological life history is often requested, detailing every aspect of the recruit's life, particularly those sensitive areas involving sex, relationship with parents, and trouble with law enforcement authorities. Other cults take a more direct approach. The recruit may be seduced by a member of the opposite sex or supplied with drugs, as in the Jones cult. At the same time, he may be deluged with hate literature attacking organized religions, particularly Judaism and Catholicism.

Whatever method is used, the cult tries to convince him that despite his problems at home and in school, "he is loved." This expression of "love" is vital to the establishment of the interpersonal bond.

Research has indicated that the interpersonal bond plays an important, if not the most important, role in cult recruitment. In the "participant-observation" studies by Lofland and Stark of the Korean-based cult of Rev. Sun Myung Moon, it was shown that if the interpersonal bonds between cult members and potential recruits failed to materialize, the newcomers failed to join.[84] This decision to join often comes only after a long period of day-to-day interaction with cult members. Conversion thus comes about not because of the appeal of its ideology, but because of the acceptance of the opinions of one's friends.[85]

These studies were reinforced by Brainbridge's study of satanic cults from 1970–1976. Brainbridge found that interpersonal bonds not only played a critical role in the recruitment of new members but was also essential to the formation of the cult itself.[86]

**Summary**

The foregoing discussions in parts I and II of this article suggest that in America, there has been a legal history of tolerance for religious beliefs, no matter how bizarre or unorthodox those beliefs are. However, with respect to religiously motivated conduct, the courts have used a balancing test, weighing the interest of the religious group against the State's legitimate interest in regulating that religiously motivated activity which is harmful to society. Congress, the U.S. Department of Justice, and State law enforcement agencies must be responsible enough to avoid interfering with religious belief; but, given this restraint, certain cult behavior (i.e., fraud, violence, deceptive practices) appears to result in substantial harm to society and this outweighs their first amendment protection. Moreover, some cult recruitment methods and behavior-control techniques indicate that decisions to join and remain in the cult often are not freely and voluntarily made.

Law enforcement can investigate cult activities and members upon receipt of information that laws have been broken. Such initiatives can be accomplished without infringing on cult members' rights to religious freedom or violating their civil liberties. Both State and Federal statutes exist under which cult leaders and cult members could be prosecuted for recruitment practices in which the decisions by youths to join or remain in the cult are not voluntarily made. Unlawful imprisonment under State law and kidnaping statutes under both Federal and State law can be used. There is U.S. Supreme Court authority for the doctrine that bonafide religious beliefs cannot absolve one from liability under the Federal Kidnaping Act.[87] However, as we will see in part III of this discussion, such prosecution is rare.

The conclusion of this three-part series will explore the problems the investigator or prosecutor has in prosecuting the deprogramer or parent of the cult member who attempts to break the cult's hold on their children by extraordinary means. **FBI**

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**Footnotes**

[33] See generally, "Cults in America," *N.Y. Times*, January 21, 22, 23, 1979; Hearings Before the Vermont Senate Committee for the Investigation of Alleged, Deceptive, Fraudulent and Criminal Practices of Various Organizations in the State, August 18, 1976, (hereafter referred to as Vermont Hearings); Charity Frauds Bureau, Final Report on the Activities of the Children of God, 1976, (submitted to New York attorney general—hereafter referred to as N.Y Attorney General Report); R. Delgado, "Religious Totalism: Gentle and Ungentle Persuasion under the First Amendment," 51 S. Cal. L. Rev. 1 (1977).

[34] *Vermont Hearings*, *supra* note 33, at 11; C. Stoner and J. Parks, *All God's Children* (Chilton Book Company, 1978), p. 175.

[35] *Id.*

[36] *Vermont Hearings*, *supra* note 33, at 59–60.

[37] *N.Y. Times*, September 30, 1975, p. 41, col. 7; Waters, "Tammy Doesn't Live Here Anymore," *Boston Magazine*, November 1975, p. 100.

[38] *Allard* v. *Church of Scientology of California*, 58 Cal App. 3d 439, 129 Cal. Rptr. 797 (1976), *cert. denied*, 429 U.S. 1091 (1977).

[39] *Id.*, p. 805.

[40] Rice, "The Pull of Sun Moon," *N.Y. Times*, May 30, 1976, (magazine).

[41] *Id.*

[42] *Id.* p. 19 (Reverend Moon owns a $620,000, 25-room mansion overlooking the Hudson River and a 50-foot cabin cruiser); *Time*, June 14, 1976, p. 50 (Unification Church planning to purchase Empire State Building); *N.Y. Times*, May 25, 1976, p. 16, col. 7 (Moon's income reported to be $60 million).

[43] *Schuppin* v. *Unification Church*, Civil No. 76-87 (D. Vt., filed April 8, 1976).

[44] R. Enroth, *Youth, Brainwashing and the Extremist Cults* (Grand Rapids, Mich.: Zondervan, 1977), pp. 163–64; Sage, "The War on Cults," *Human Behavior*, October 1976, p. 76.

[45] Roche Report, "Cultism and the Young," *Frontiers of Psychology*, September 1, 1976, p. 2.

[46] C. Stoner and J. Parks, *supra* note 34, at 218.

[47] R. Enroth, *supra* note 44, at pp. 23–24.

[48] Rice, "Messiah from Korea: Honor Thy Father Moon," *Psychology Today*, January 1976, p. 39; *Time*, June 14, 1976, p. 49.

[49] C. Stoner and J. Parks, *supra* note 34, at 106–107 (starving cult members during cold weather); Vermont Hearings, *supra* note 331, at 63; Enroth, *supra* note 44, at 23–24; Rice, "The Pull of Sun Moon," *N.Y. Times*, May 30, 1976, p. 23 (magazine).

[50] R. Enroth, *supra* note 44, at 43; C. Stoner and J. Parks, *supra* note 34, at 13.

[51] C. Stoner and J. Parke, *supra* note 34, at 106–107; *Seattle Post-Intelligencer*, January 24, 1972, A–3, col. 5.

[52] *N.Y. Times*, January 21, 1979, A–52, col. 3.

[53] *N.Y. Times*, January 21, 1979, A–52, col. 1.

[54] N.Y. Times, September 4, 1980, A–21.

[55] Rice, "The Pull of Sun Moon," *N.Y. Times*, May 30, 1976 (magazine); National Ad Hoc Committee, "The Unification Church: Its Activities and Practices, A Meeting of Concerned Parents, A Day of Affirmation and Protest," April 20, 1976; *N.Y. Times*, April 24, 1977, A–25 col. 1.

[56] *N.Y. Times*, January 23, 1979, A–6, col. 2.

[57] R. Enroth, *supra* note 44, at 188 (mother beaten when she tried to see daughter; father beaten at Hare Krishna Temple); *N.Y. Times*, September 30, 175, A–41, col. 7 (father allegedly beaten); Vermont Hearings, *supra* note 33, at 6 (psychiatrist threatened with "trouble for your house and wife"); *Philadelphia Daily News*, April 22, 1977, A–6, col. 3 (Connecticut women active in anticult movement receiving threatening phone calls).

[58] Erickson and MacPherson, "The Deceptions of the Children of God," *Christianity Today*, vol. 17, 1973, p. 1090 (as quoted by followers of Children of God on Canadian T.V.); *Dallas Morning News*, October 19, 1975, A–34, col. 1; National Ad Hoc Committee, *supra* note 55, at 29 ("If my family proved to be a threat to the mission of the Messiah, I would murder them."); *Washington Post*, August 20, 1975, C–1, col. 4 (where psychiatrist testified former cult members have stated they would kill if ordered to do so by the Church).

[59] *The Christian Science Monitor*, "Some U.S. Religious Militants Adopt Trappings of Real War", March 24, 1981.

[60] Ted Patrick, Playboy Interview, *Playboy*, March 1979, p. 68.

[61] James J. Richardson, "Conversion and Commitment in Contemporary Religion," *American Behavioral Scientist*, vol. 20, No. 6, July–August 1977, p. 800.

[62] T. Robbins and D. Anthony, "Cults, Brainwashing, and Counter Subversion," *American Academy of Political and Social Science*, November 1979, pp. 78–90.

[63] R. Enroth, *supra* note 44, at 174–175; Gunther, "Brainwashing: Persuasion by Propaganda," *Today's Health*, February 1976, p. 15; Erickson and MacPherson, *supra* note 58.

[64] *Supra* note 57.

[65] W. Peterson, *Those Curious New Cults* (New Cannan, Conn.: Keats Publication Co., 1976), p. 131.

[66] Vermont Hearings, *supra* note 33, at 17; R. Enroth, *supra* note 44, at 12, 183. N.Y. Attorney General Report, *supra* note 33, at 11.

[67] R. Enroth, *supra* note 44, at 63–64, 160. Rice, *supra* note 55; N.Y. Attorney General Reports, *supra* note 33, at 38.

[68] R. Enroth, *supra* note 44, at 12; Beckford, "A Korean Evangelistic Movement in the West," Acts of the 12th International Conference for the Sociology of Religion, 1973, pp. 319, 321–323; see generally, F. Conway and J. Siegelman, *Snapping*, (Philadelphia, Pa.: J. B. Lippincott, 1978).

[69] 94th Congress, House, 2d sess., January 28, 1976 *Congressional Record*, vol. 122, part 2, p. 1391.

[70] N.Y. Attorney General Report, *supra* note 33, at 11.

[71] *Katz* v. *Superior Court*, 73, Cal. App. 3d 952, 141 Cal. Rptr. 234, 975 (1977).

[72] *Id.* at 976.

[73] John G. Clark, Jr., M.D. "Cults", *Journal of the American Medical Association*, July 20, 1979, vol. 242, No 3, pp. 279–281.

[74] F. Conway and J. Siegelman, "Have Cults Created a New Mental Illness?" *Science Digest*, January 1982, p. 86.

[75] M. T. Singer, "Coming Out of the Cults," *Psychology Today*, January 1979, pp. 72–82; M. T. Singer, "Therapy with Excult Members," *Journal of the National Association of Private Psychiatric Hospitals*, vol. 9, No. 4, pp. 14–18.

[76] Harayda, "I was a Robot for Sun Myung Moon," *Glamour*, April 1976, p. 216; N.Y. Attorney General Report, *supra* note 33, at 10–12; R. Enroth, *supra* note 44, at 149.

[77] *Peterson* v. *Sorlien*, 299 N.W. 2d 123 (1980), *cert. denied*, 450 U.S. 1031 (1981).

[78] *Id.* at p. 130.

[79] Enroth, *supra* note 44, at 158–159.

[80] *Id.*

[81] *Time*, June 14, 1976, pp. 18–49 (Unification Church, in order to peddle their wares, may claim to be helping drug addicts, orphans, anyone since such lies are merely "heavenly deceit.")

[82] *L.A. Times*, April 7, 1976, A–11, p. 1, col. 1.

[83] *N.Y. Times*, December 29, 1976, A–14, col. 4.

[84] John Lofland and Rodney Stark, "Becoming a World Saver: A Theory of Conversion to a Deviant Perspective," *American Sociological Review*, vol. 30, 1965, pp. 862–875; John Lofland, *Dooms Day Cult* (Englewood Cliffs, N.J.: Prentice Hall, 1966).

[85] Other researchers revealed similar findings with Church of the Sun cult (F. R. Lynch, "Toward a Theory of Conversion and Commitment to the Occult," *American Behavioral Scientist*, vol. 20, 1977, pp. 889–903) and the Jesus Movement Cult (J. T. Richardson and M. Stewart "Conversion Process Models and the Jesus Movement," *American Behavioral Scientist*, vol. 20, 1977, pp. 819–838.

[86] R. Stark and W. S. Brainbridge, "Networks of Faith: Interpersonal Bonds and Recruitment to Cults and Sects," *American Journal of Sociology*, May 1980, pp. 1376–1399; W. S. Brainbridge, *Satan's Power* (Berkeley and Los Angeles: University of California Press, 1978).

[87] *Chatwin* v. *United States*, 326 U.S. 455, 90 L. Ed. 199, 66 S. Ct. 233, (1945) at 460.

# THE FOURTH AMENDMENT AT A ROCK CONCERT

By
JEROME O. CAMPANE
*Special Agent*
*FBI Academy*
*Legal Counsel Division*
*Federal Bureau of Investigation*
*Quantico, Va.*

*Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.*

> " 'Over and again this Court has emphasized that the mandate of the [Fourth] Amendment requires adherence to judicial processes,' and that searches conducted . . . without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions."

This now famous quotation from the U.S. Supreme Court's landmark 1967 decision of *Katz* v. *United States*[1] affirmed the preeminence of the Warrant Clause in fourth amendment[2] jurisprudence. With the *Katz* mandate in mind, consider this scenario:

> The chief of police summons you to his office. He has just been informed by the manager of the new city-owned civic center that a popular rock band has been booked for a 1-night concert. The center is obligated by contract with the promoter to provide security. The chief has heard that such concerts usually draw crowds of unruly young patrons, many of whom may be in possession of bottles, cans, alcohol, and assorted weapons and drugs. He therefore believes the police department will have to augment the center's own security force. He asks you to take charge of the police detail and draw up a security plan to prevent the introduction of these items into the concert. As you leave, the chief suggests, "A good shakedown at the door ought to do the job."[3]

What kind of procedures would you draft to effectuate the chief's wishes? Can persons suspected of possessing alcoholic beverages, drugs, or weapons be searched? Does the Warrant Clause of the fourth amendment present a problem? If so, could you articulate a "specifically established and well-delineated exception" to the warrant requirement to fit this situation? Would you be surprised to learn that when courts have had the occasion to address these questions, they have consistently refused to permit either the enactment or implementation of any practical procedure that would appease the chief's legitimate concern? Although these questions are associated with any attempt to provide security at a large public gathering, such as athletic events, conventions, symphony concerts, and the like, most litigation on this issue relates to police screening procedures at performances by rock-and-roll bands.

The rock concert is a major source of revenue for civic centers, arenas, stadiums, and coliseums with large seating capacities. Events at such places are oftentimes sold out. The musicians and tens of thousands of spectators, many just teenagers or younger, have a reasonable expectation of police protection. This article is designed to help a law enforcement agency secure a legal foundation upon which it can provide that protection. First, it provides an overview of the fourth amendment. Second, it reviews the security measures used and challenged at six civic centers across the country. Third, it analyzes the court decisions in these six contested cases and points out the constitutional inadequacies in the procedures employed. And fourth, it provides some suggestions to help overcome the fourth amendment pitfalls awaiting a law enforcement agency confronted with a similar security problem.

## THE FOURTH AMENDMENT WARRANT CLAUSE

To appreciate the legal difficulties implicit in the chief's request requires an understanding of how the Supreme Court views the fourth amendment. Its two principal clauses guarantee persons the right to be free from unreasonable searches and seizures and

*Special Agent Campane*

require that warrants be issued only upon a showing of probable cause. At one time, the Court did not believe the fourth amendment required a law enforcement officer to obtain a warrant every time he conducted a search. Searches were upheld as reasonable without reference to the availability of a warrant so long as the officer had probable cause to make the fourth amendment intrusion. The Court thought that a test of reasonableness, applied after the fact when the prosecution attempted to introduce the evidence, afforded ample safeguards for a citizen's rights. This view was expressed by the Court as follows in *United States* v. *Rabinowitz*:

> "The relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable. That criterion in turn depends on the facts and circumstances—the total atmosphere of the case . . . and not upon the practicability of procuring a search warrant, for the warrant is not required." [4]

The earlier emphasis on the reasonableness standard has been criticized as emasculating the value of the Warrant Clause, for it is but a short step to the next position—that it is never necessary for the police to obtain a warrant (and thus establish probable cause) to conduct a search or seizure. For years the Court struggled with this problem in an effort to find the proper relationship between the two clauses.[5]

The *Katz* decision ended the debate. The reasonableness view typified by the *Rabinowitz* decision was rejected and the Warrant Clause now predominates. Today, the Supreme Court equates the warrant requirement with reasonableness and requires judicial scrutiny before, not after, privacy is invaded. The Court is convinced that law enforcement officers become too involved "in the often competitive enterprise of ferreting out crime" [6] to make the kind of informed and deliberate determination which reasonable men would draw from the evidence in a criminal investigation.[7]

This emphasis on the warrant provision has been criticized for making the reasonableness stricture superfluous and contrary to colonial history, when warrantless searches were common and accepted.[8] In order to give the reasonableness standard some meaning, therefore, the Supreme Court has fashioned a small number of carefully drawn exceptions to the warrant rule.[9] These exceptions have remained limited in scope, despite continuous efforts to expand upon them.[10] Each has been fashioned only after the Court has been satisfied that a narrowing of a person's expectation of privacy is justified under the particular circumstances presented by each case.

## GOVERNMENT ACTION

The constitutionality of civic center screening procedures can only be brought into issue when they implicate government action. The fourth amendment's origin and history show that it was intended only as a restraint upon the activities of sovereign authority, be it local, State, or Federal.[11] In 1961, the Supreme Court made clear in *Mapp* v. *Ohio* [12] that the remedy for an unreasonable fourth amendment search is the exclusion of any evidence derived therefrom, if it is offered as evidence by the prosecution in a State criminal trial. In 1968, the Court held in

**". . . the Supreme Court equates the warrant requirement with reasonableness and requires judicial scrutiny before, not after, privacy is invaded."**

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*Terry* v. *Ohio*[13] that pat-downs or "frisks," as well as full body searches, are "searches" within the meaning of the fourth amendment. Thus, if a civic center patron is detained, frisked, or searched by a police officer employed by a government agency and duly sworn to enforce the law, the patron may use the exclusionary rule to challenge the admissibility of any evidence seized. This is one method by which a patron can question the lawfulness of the screening procedure used.

The fact that the officer is on or off duty, or in or out of uniform, is not controlling. It is the nature of the officer's actions which invoke the fourth amendment. In one civic center case, off-duty police officers were employed as security officers. In response to a motion to suppress the fruits of a search, the State claimed the fourth amendment did not apply to conduct of private citizens, albeit off-duty police officers. The court quickly dismissed this claim.

> "The men were police officers, they were in uniform, they carried sidearms. . . . Most significantly of all, the whole arrangement was effected in cooperation with the Des Moines Police Department. . . . 'The Fourth Amendment applies to a search whenever the government participates in any significant way in this total course of conduct.'"[14]

Even if a privately owned facility enlists the aid of off-duty police officers, the requisite government action is present to circumscribe their activity within the ambit of the fourth amendment. The courts reason that a police officer's off-duty status is not a limitation on his or her right to exercise police authority and perform those law enforcement functions he or she normally performs during duty hours.[15]

However, most rock concert patrons who are stopped and searched will not be in possession of prohibited items. Even when such items are discovered, they are usually confiscated and no arrests are made. In such cases, the exclusionary rule cannot help an aggrieved citizen. In order to remedy the claimed illegality, a searched patron must sue the responsible authorities. Such a civil suit is generally initiated in Federal court and seeks declaratory and injunctive relief under the Civil Rights Act of 1871, codified in Title 42, U.S. Code, Section 1983 (commonly known as Section 1983 suits).[16] The plaintiff usually alleges a deprivation of rights secured by the 4th amendment as made applicable to the States through the 14th amendment Due Process Clause.[17]

The statute clearly provides that relief is only available under its provisions to those who show that the person depriving the citizen of a constitutional right was acting under color of State law. This is known as the 1983 State action requirement. State action is present whenever a person is acting under the order, instruction, request, or at the acquiescence of a State or local government agency.[18] If a privately owned civic center hires or contracts out for its own private security force, the security procedures used should not be subject to attack on either a fourth amendment or a Section 1983 basis.[19] But a law enforcement officer, even while employed by a private vendor, is sworn to enforce State criminal statutes. The officer's security activities at a civic center provide the requisite government action to make him amenable to suit under Section 1983. In addition, where the coliseum is owned by the city, or where local ordinance empowers coliseum officials to operate the facility and make all rules and regulations governing its use, or where police departments permit the off-duty employment of their officers, courts have not hesitated to join local governments, police officials, and coliseum authorities as defendants in the suit.[20] In fact, the requisite State action is present even when the city requires rock concert promoters to hire their own private guards to maintain order and security.[21]

The civic center security cases litigated to date invoke the strictures of the fourth amendment, either directly in a criminal proceeding or indirectly through a Section 1983 civil suit. It is obviously impractical to obtain individualized body and property search warrants when 10,000 to 20,000 spectators are due to attend any given event. The authorities faced with drafting a screening mechanism and those employed to execute it are thereby forced to justify their activities pursuant to one of the exceptions to the fourth amendment warrant requirement. The three exceptions which have been used are the *Terry* stop-and-frisk, the administrative search, and the consent search. But these exceptions were fashioned in factual settings far removed from the massive invasion of privacy envisioned by the possible search of hundreds of citizens and their property at government-sponsored public events. Not unexpectedly, the arguments made to justify civic center screening procedures were all doomed to fail under today's fourth amendment standards.

## CIVIC CENTER LITIGATION

### Hofheinz Pavilion, University of Houston, Houston, Tex.

The first civic center screening procedure subject to judicial scrutiny involved a State university. The decision, *Collier* v. *Miller*,[22] has become the benchmark for all subsequent civic center litigation. A female student was stopped by a security guard as she entered the building to attend a rock concert. The employee worked for the university's Traffic and Security Department. He claimed he instructed the student that he was going to search her purse for beverage containers, weapons, and drugs. He purportedly grabbed her purse, whereupon she snatched it back. The student then claimed the guard seized her arm, took her into the lobby, threatened her with arrest, and thoroughly searched her purse. The officer did not find any items worth confiscating and returned the purse. She then proceeded on to the concert. Subsequently the student, Ms. Collier, brought suit in Federal court seeking declaratory relief under Section 1983.

At trial it was determined that the search policy was unwritten and left much to the discretion of the individual security officer. The officer gave no reason why he decided to search the purse of the plaintiff, but not those of her companions. There was no history of incidents at Hofheinz Pavilion that would have prompted a screening procedure. Further, those searches in fact conducted appeared to depend largely on the type of crowd expected, with more searches made at rock concerts than at other events. University authorities sought to justify the searches on these grounds: (1) They provided safety and security for all present, (2) some entertainers requested the banning of bottles and cans, and (3) the floor of the pavilion was composed of a special synthetic material which could easily be damaged by projectiles.[23]

After the incident with Ms. Collier, the school expressed its then existing policy in writing as follows:

> "[Do] not allow persons to enter . . . with containers, packages or bundles that could conceal alcoholic beverages, cans or bottles unless they are willing to let those packages and parcels or bundles be opened and examined to be sure that they do not contain such beverages or containers. If they do not wish such an examination to be made, the University is within its rights to refuse admittance. The principle involved is the same as that used in the examination of hand luggage before boarding aircraft. All should understand that this does not mean there is a wholesale license to require examination of all parcels and handbags but only those bags that could reasonably be of such size as to conceal bottles or cans."[24]

It was this written policy that the parties agreed to litigate. The court did not believe any of the recognized exceptions to the warrant requirement apply to personal searches authorized and enforced by the policy. First, airport and courthouse administrative warrantless searches were inapposite. Courts have universally permitted these precautionary security measures under the tripartite considerations of public necessity, efficacy of the search, and degree and nature of the intrusion.[25] As for public necessity, the court believed precautionary screening procedures at airports and courthouses are required due to the unprecedented violence created by those threatening to use weapons of mass destruction. The dangers posed by the potential misuse of bottles and cans, however, "pales in comparison"[26] to the danger posed by a bomb or gun. Also, the defendants produced absolutely no evidence of any history of disturbances or injuries necessitating a search policy.

Aside from this problem, the court believed the effectiveness of any procedure that is only applied at random to many thousands of patrons is questionable at best, because the task of discovering all hidden flasks of alcohol and caches of drugs is virtually insurmountable. Airport and courthouse searches, on the other hand, are a product of the use of terrorist profiles, magnetometers, and X-ray machines which have been able to detect all unusual quantities of metal. Consequently, these search procedures have caused a dramatic decline in the number of hijackings and bombings. In addition, the character of the searches suggests a minor invasion of privacy. Airline passengers, in particular, have come to expect a search applied quickly and indiscriminately to all who enter the protected locations. Contrariwise, the pavilion searches were substantial and randomly applied. The security officers operating under the University of Houston's policy were required to apply their own subjective standards in determining which large pockets or purses to search thoroughly. That determination did not turn on whether a given container was large enough to hold a prohibited item, as fewer items were searched at symphony concerts than at rock concerts, thus suggesting that only certain members of a class were singled out and searched.[27]

Second, the court reasoned that the stop-and-frisk doctrine of *Terry* v. *Ohio* did not apply to Ms. Collier's case. Viewed from the level of suspicion necessary to justify an investigative detention constitutionally, *Terry*

**"The civic center security cases litigated to date invoke the strictures of the fourth amendment, either directly in a criminal proceeding or indirectly through a Section 1983 civil suit."**

requires a law enforcement officer to be able to point to specific and articulable facts which, taken together with rational inferences drawn from those facts, would reasonably warrant the intrusion.[28] The detentions authorized under the university's policy, however, were conducted without any definitive basis for suspicion that a crime was being or was about to be committed. Nor were the resulting searches limited in scope to a pat-down for inherently lethal weapons. Rather, they sought to exclude items which could pose a danger to the public only if misused. *Terry* did not sanction wholesale searches of the general public specifically designed to discover contraband and evidence of crimes.[29]

Third, the court did not believe these procedures presented a case of implied consent. Voluntary consent is based on the totality of the circumstances,[30] but here the university made no effort to post signs or provide some other means of advance notice that might justify its reliance on an implied consent theory. Verbal consent was not sought, if at all, until after the patron was initially seized. In order to legitimize the search on consent grounds, the university had to establish that both the initial detention at the door and the subsequent search for proscribed items was voluntary. Further, the court disapproved of the university's attempt to reserve the right to deny admittance. Access to the pavilion was a privilege extended to the public at large. If the exercise of the privilege was conditioned on submission to a search, that submission would be coerced and hence not consensual.[31]

In sum, the court declared the policy unconstitutional and concluded that none of the recognized exceptions to the warrant requirement nor the balancing test of reasonableness applied in carving out these exceptions could validate the broad, random intrusions authorized by the university's search procedure.[32]

Subsequent civic center decisions have relied on the *Collier* reasoning to dismiss screening procedures on administrative search, stop-and-frisk, and implied consent grounds. Although Ms. Collier was never asked to consent, the court suggested that a consent theory may be viable if expressed and truly voluntary. The later cases therefore reflect screening procedures sought to be justified primarily on this expressed consent exception to the warrant requirement.

### Greensboro Coliseum Complex, Greensboro, N.C.

The Greensboro Coliseum is owned by the City of Greensboro, and by local ordinance, regulated by the War Memorial Commission. The commission hired off-duty policemen to act as security personnel. The officers wore uniforms and were armed. A search policy was instituted as a result of detailed, statistical evidence of violence at sporting events and rock concerts, where officers were assaulted and performers injured by flying bottles.[33] If an individual refused to be searched at the turnstile, he or she was denied admission. The policy, as exhibited on signs, printed on the back of tickets, and announced over the public address system, was designed to exclude alcohol, drugs, and other contraband from the coliseum grounds.

The searches consisted of four stages: (1) Visual surveillances at turnstiles, (2) plain view seizures (drug offenders were arrested), (3) instructions to patrons with large packages that they could not come inside, and (4) random searches of handbags, coats, and trouser pockets. The guards regularly asked permission before they looked into women's purses, although on occasion such requests were worded, "I need to see into that," or "Let me see what you have got there," and were perceived by the patrons as commands. Patrons were not told they could elect not to be searched, obtain a refund, and leave.[34]

This policy was challenged in the Section 1983 case of *Wheaton* v. *Hagan*,[35] decided in 1977. The court paraphrased the decision in *Collier*, decided only a year earlier, and concluded that no exception to the warrant requirement was applicable to the Greensboro screening procedure. The court sympathized with the crowd control problem exhibited at rock concerts and admitted that the Greensboro policy was a far better effort to imply consent to search, but pointed out that implied consent had been repudiated by *Collier*. Nor was this policy indicative of individualized and voluntarily expressed consent, for which the court believed the officers should have:

1) Dressed in civilian clothes,
2) Provided the patrons with the choice to either deposit bulky items in a checkroom or take them to their cars,
3) Notified each person stopped of the right not to be searched,
4) Avoided implied commands, such as "I need to look in your purse," and
5) Abolished festival seating (first come, best seat), where patrons are reluctant to secure packages after the rush to the turnstiles begins.[36]

### Veterans Memorial Auditorium, Des Moines, Iowa

The third Section 1983 case, *Stroeber* v. *Commission Veteran's Audi-*

*torium,*[37] also decided in 1977, presented a screening policy almost identical to that employed at the Greensboro Coliseum. The court, like those before it, dismissed the airport-courthouse, stop-and-frisk, and implied consent justifications for the search policy. It held that when a random number of patrons, having purchased tickets and entered turnstiles, are suddenly confronted with armed, uniformed police officers and told that admission is conditioned upon their submission to a search of their persons and effects, no implied or expressed consent is possible:

> "Under the circumstances, which are marked by coercion and duress, the Court cannot possibly conclude that any ensuing consent to search was of a voluntary nature. . . . The mere fact that most patrons submitted to search bespeaks more of coercion and duress than voluntariness." [38]

### Montgomery Civic Center, Montgomery, Ala.

In the Section 1983 case of *Gaioni* v. *Folmer,*[39] decided in 1978, serious questions about the voluntariness of any expressed consent were again raised. The mayor and chief of police attended a rock concert at the new city-owned civic center and were apparently appalled at the drug and alcohol consumption they observed. As a result, a one-time-only shakedown plan was put into effect for a subsequent rock concert. Forty-nine police officers, including strike force members, conducted discretionary, random searches. Approximately 65 percent of the entering patrons were searched. Citizens were ordered to open coats and lift shirts. Bulges were patted, pockets searched, purses examined. Forty-two patrons were arrested. Many citizens did not know they could refuse to be searched nor were those who knew of their right given an opportunity to do so.[40]

The city posted signs and argued this step justified implied consent searches. The court held that the atmosphere at the concert, which it characterized as an armed camp, was hardly conducive to people making free and unconstrained choices whether to allow themselves to be searched. But the court went on to hold that under these circumstances, even expressed consent would not have been voluntary, since people undoubtedly believed if they refused to be searched, they would forfeit their right to attend the concert. Further, the court cited certain reasoning in *Collier,* overlooked by subsequent decisions, to the effect that an arena cannot condition public access on submission to a search and then claim those subjected to the searches voluntarily consented.[41]

In other words, a sixth factor must be added to the five express consent factors enumerated by the *Wheaton* court—verbal notification to each person detained that the officer cannot deny entry for refusal to submit to search. To the argument that if notification is required, hardly anyone would consent, the *Gaioni* court replied: "If an event cannot be policed in a manner that comports with the Constitution, it should not be sponsored by the City of Montgomery." [42]

### Neal Blaisdell Center, Honolulu, Hawaii

The latest Section 1983 case to consider the screening problem, *Nakamoto* v. *Fasi,*[43] was decided in 1981. Plaintiff Nakamoto was stopped at the turnstile and told that a handbag search would condition her entry. She was not informed, as the *Gaioni* court had suggested, that she could refuse the inspection and testified that she felt compelled to consent. The court reiterated as part of its decision invalidating the procedure that even if Ms. Nakamoto had been notified of her right to refuse to submit to the search, conditional entry is inherently coercive. The city could not require a patron to relinquish the right to be free from unreasonable searches and seizures in order to be allowed to exercise a privilege for which the patron had paid.[44]

### SUMMARY

To date, no civic center screening procedure has withstood judicial scrutiny. But this is not to suggest, as the *Gaioni* court intimated, that the fourth amendment bars civic centers from staging rock concerts altogether. Nor should the law enforcement agency wash its hands of the problem and permit a few rock concert patrons to engage in unlawful and dangerous activities. The many law-abiding spectators deserve adequate police protection.

However, it has been no easy task justifying the various turnstile screening procedures employed at civic centers around the country. Analogies to courthouse and airport searches have been held inappropriate, even when the arena authorities have been able to document injuries. A bottle or can is just not taken as seriously as a bomb or handgun.

The courts agree that a *Terry* stop is always permissible if an officer's articulable suspicion is drawn to a particular patron. However, the *Terry* approach is not very practical. Citizens wishing to smuggle drugs or contraband into an arena could succeed without creating a bulge in their clothing large enough to suggest a weapon and thus justify a frisk. Also, the sheer number of people congregating at one time at the arena doors militates against an

**"Two (factors in any screening process) are essential: (1) Individualizied verbal notice that the patron need not consent to a search, and (2) individualized verbal notice that the patron will not be denied admittance if he or she refuses."**

officer's attempt to focus his suspicion on one patron.

The focus of the screening would seem more appropriate in the seating area where disorderly patrons can be observed drinking, using drugs, and throwing bottles and cans. But probable cause, warrantless arrests do not seem suitable when there is a possibility that hundreds, if not thousands, of patrons may be engaged in some of these activities. Besides, interior policing would defeat the purpose of the security force, which is to keep dangerous articles and contraband out of the arena in the first place.

The *Wheaton* court suggested banning all parcels over a certain size and providing checkrooms for their safekeeping. But this approach would not screen out the items of greatest concern to civic center authorities—the small flasks of alcohol and packages of drugs easily hidden under clothing.

The implied consent justification for warrantless searches has been uniformly rejected. Signs, ticket warnings, and elaborate public address announcements do not in and of themselves overcome the inherently involuntary nature of consent given by a citizen anxious to get into the area.

An expressed consent procedure offers the most promise. A number of factors are essential, as pointed out above, and should be part of any screening mechanism. Two in particular are essential: (1) Individualized verbal notice that the patron need not consent to a search, and (2) individualized verbal notice that the patron will not be denied admittance if he or she refuses. This too has its impractical aspects, for a spectator with contraband, when so informed, may act normal and refuse to be searched. However, the mere impression of enforcement can be a major deterrent for others.

## SUGGESTED PROCEDURES

The courts all agree that civic center authorities are entitled to take necessary steps to prevent the misuse of the premises, to provide protection for those invited to enter, and to prohibit the introduction of contraband and dangerous items. The courts also agree that such events are difficult to police. Their sympathies seem to suggest that a screening procedure designed to avoid creating the impression of arbitrary and coercive searches directed primarily at minors will eventually pass judicial review.

Security personnel should be instructed to rely primarily on the plain view, stop and frisk, probable cause, and express consent rationales when searching patrons. The six express consent factors could be printed on small cards and read or given to the patron selected to be searched. Advance notice on tickets and signs will enforce an impression of voluntary consent, as will the availability of checkrooms for the deposit and safekeeping of large packages. Unarmed officers in civilian clothes will help overcome the coercion factor. The elimination of festival seating will avoid the mad rush through the turnstiles as the doors first open and will give the security force a better opportunity to observe the patrons. When items are seized or arrests made, mass media publicity of the fact may help dissuade those so inclined to introduce prohibited items at future concerts.

Above all, any procedure should be uniformly applied. It should not be employed only at rock concerts and only against teenagers. Civic center authorities should carefully document any incidents of violence and unruly behavior and apply the screening procedure at all events where such conduct is likely to take place. In addition, all patrons with certain kinds of packages, such as coolers or paper bags, should be subject to the screening mechanism. Searches in fact conducted should be as brief and unobtrusive as possible.

These suggestions are certainly not all-inclusive. But an imaginative screening procedure incorporating many of these factors will certainly create a far better impression on the courts than the procedures litigated to date. It will show that civic center security personnel are taking every possible precaution to protect the privacy of their guests, while at the same time providing the kind of law enforcement and crowd control required by such large public gatherings. **FBI**

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**Footnotes**

[1] 389 U.S. 347, 357 (1967), quoting *United States*, v. *Jeffers*, 342 U.S. 48, 51 (1951).

[2] U.S. Const. amend. IV provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

[3] *See generally Gaioni* v. *Folmar*, 460 F.Supp. 10 (M.D. Ala. 1978). The chief's suggestion is similar to that made by the public safety director for the City of Montgomery, Ala., in anticipation of a rock concert in Montgomery's Civic Center.

[4] 339 U.S. 56, 66 (1950). *Accord, Carroll* v. *United States*, 267 U.S. 132 (1925) (warrantless search of automobile based on probable cause and exigent circumstances held reasonable); *Harris* v. *United States*, 331 U.S. 145 (1947) (warrantless search of premises incident to arrest held reasonable); *Brinegar* v. *United States*, 338 U.S. 160 (1948) (warrantless search of automobile held reasonable).

[5] *See, e.g., Coolidge* v. *New Hampshire*, 403 U.S. 443 (1971). Justice Stewart, writing for the Court, surveyed the inconsistent application of the reasonableness standard to search incident to a lawful arrest. *Compare Trupiano* v. *United States*, 334 U.S. 699 (1948) (warrantless seizure of still within sight of the location of arrest held unreasonable because officer had time to obtain a warrant) *with Harris* v. *United States*, *supra* note 4 (warrantless search of entire premises following arrest of suspect held reasonable); *United States* v. *Rabinowitz*, *supra* note 4 (overruling *Trupiano*, *supra*, warrantless search of desk, safe, and file cabinets in room where suspect arrested held reasonable); *and Chimel* v. *California*, 395 U.S. 752 (1969) (overruling *Rabinowitz*, *supra*, warrantless search of any part of a room not accessible to subject at moment of arrest held unreasonable). *See also*, *New York* v. *Belton*, 69 L. Ed. 2d 768 (1981) (expanding area in motor vehicle subject to search in arrest context).

[6] *Johnson* v. *United States*, 333 U.S. 10, 14 (1948).

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[7] *Coolidge* v. *New Hampshire, supra* note 5. The debate goes on for a number of Supreme Court Justices. *See, e.g.*, Justice White's opinion for the Court in *Chambers* v. *Maroney*, 399 U.S. 42 (1970), and his dissenting opinions in *Coolidge* and *Payton* v. *New York*, 445 U.S. 573 (1980). *See also* Justice Rehnquist's dissenting opinion in *Steagald* v. *United States*, 451 U.S. 204, 224 (1981) "Here as in all Fourth Amendment cases, 'reasonableness is the ultimate standard' ". There is no debate with reference to arrests, which may be made without warrants in any public location, so long as the arrest is supported by probable cause. *See United States* v. *Watson*, 423 U.S. 411 (1976).

[8] *Coolidge* v. *New Hampshire, supra* note 5 (1971) (White, J. dissenting).

[9] *See, e.g., Carroll* v. *United States, supra* note 4, (motor vehicle exception); *Warden* v. *Hayden*, 387 U.S. 294 (1967) (hot pursuit exception); *Terry* v. *Ohio*, 392 U.S. 1 (1968) (stop-and-frisk exception); *Schneckloth* v. *Bustamonte*, 412 U.S. 218 (1973) (consent to search exception); *Chimel* v. *California, supra* note 5 (search incident to arrest exception); *Coolidge* v. *New Hampshire, supra* note 5 (plain view exception); *United States* v. *Martinez-Fuerte*, 428 U.S. 543 (1976) (border search exception); *Camera* v. *Municipal Court*, 387 U.S. 523 (1967) (administrative search exception; although court order required in highly regulated industries where public safety is a major governmental concern, a lesser justification than probable cause required).

[10] *See, e.g., United States* v. *Chadwick*, 433 U.S. 1 (1977) (footlocker in trunk of an automobile not subject to search under motor vehicle exception to the warrant requirement); *Mincey* v. *Arizona*, 437 U.S. 385 (1978) (warrantless crime scene search cannot rely on a State statute creating a homicide crime scene exception to the warrant requirement); *Michigan* v. *Tyler*, 436 U.S. 499 (1978) (no arson crime scene exception for searches conducted from 4 to 25 days after the fire put out); *Dunaway* v. *New York*, 442 U.S. 200 (1979) (detention for custodial interrogation requires probable cause and a warrant); *Payton* v. *New York, supra* note 7 (arrest of suspect in his own residence, absent consent or exigent circumstances, requires a warrant).

[11] *Wolf* v. *Colorado*, 338 U.S. 25 (1949).

[12] 367 U.S. 643 (1961).

[13] *Supra* note 9 (*Terry* permitted a carefully limited pat-down on less than probable cause if suspect reasonably believed to be armed and dangerous).

[14] *State* v. *Carter*, 267 N.W. 2d 385 (Iowa 1978), quoting *United States* v. *Davis*, 482 F.2d 893, 896–97. (9th Cir. 1973) (private airport search by private security guards, but on behalf of Federal Aviation Administration, held to be Government action).

[15] *See, e.g., State* v. *Williams*, 297 So.2d 52 (Fla. App. 1974) (off-duty police officer employed as security guard at private club); *State* v. *Robinson*, 379 So.2d 712 (Fla. App. 1980) (off-duty police officer employed as security guard at private jai-alai fronton); *Wood* v. *State*, 486 S.W.2d 771 (Tex. App. 1972) (off-duty police officer directing traffic out of a private corporation's parking lot onto a public street); *State* v. *Wilkerson*, 367 So.2d 319 (La. 1979) (off-duty deputy sheriff employed as security guard at private apartment complex); *McGibiany* v. *State*, 399 So.2d 125 (Fla. App. 1981) (off-duty police officer employed as a hotel detective); *Hughes* v. *State*, 400 So.2d 533 (Fla. App. 1981) (off-duty deputy sheriff employed as department store security guard).

[16] The statute reads:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

[17] U.S. Const. amend. XIV provides, in part:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

*See, e.g., Wheaton* v. *Hagan*, 435 F.Supp. 1134, 1138, note 1 (M.D.N.C. 1977). Independent 14th amendment due process and equal protection issues arise where patrons of rock concerts are subjected to search, while patrons of other events are not, or where a contraband arrest policy is enforced against patrons in possession of drugs but not those in possession of intoxicating beverages. *See also Gaioni* v. *Folmar, supra* note 3 (class action by patrons of a civic center rock concert subjected to warrantless searches. Jurisdiction is invoked under 28 U.S.C. 1343 (3) and (4) and 28 U.S.C. 2201, *et. seq.*, and the class action provision of Rule 23(b)(2), Fed. R. Crim. P.).

[18] *See Screws* v. *United States*, 325 U.S. 91 (1945); *Williams* v. *United States*, 341 U.S. 97 (1951); *Monroe* v. *Pape*, 365 U.S. 167 (1961); *Griffin* v. *Maryland*, 378 U.S. 130 (1963); *Robinson* v. *Davis*, 447 F.2d 753 (4th Cir. 1971), *cert. denied*, 405 U.S. 979 (1972); *Stengel* v. *Belcher*, 522 F.2d 438 (6th Cir. 1975), *cert. dismissed*, 425 U.S. 910 (1976); *Davis* v. *Murphy*, 559 F.2d 1098 (7th Cir. 1977); *Traver* v. *Meshny*, 627 F.2d 934 (9th Cir. 1980).

[19] *See, e.g., United States* v. *Francoeur*, 547 F.2d 891 (5th Cir. 1977), *cert. denied*, 431 U.S. 932 (1977) (Florida Disney World security guard); *People* v. *Toliver*, 377 N.E.2d 207 (Ill. App. 1978) (store detective); *People* v. *Holloway*, 267 N.W.2d 454 (Mich. App. 1978) (store detective); *Gillett* v. *State*, 588 S.W.2d 361 (Tex. Ct. App. 1979) (store detective); *United States* v. *Lima*, 424 A.2d 113 (D.C. App. 1980) (store detective). *But see People* v. *Zelinski*, 594 P.2d 1000 (Cal. 1979) (Exclusionary Rule applied under State constitution where private security personnel exercised arrest and weapons search powers under California Penal Code); *Lucas* v. *United States*, 411 A.2d 360 (D.C. App. 1980), *rehearing denied*, 414 A.2d 830 (1980) (when private detectives have arrest authority by statute, their actions are subject to the fourth amendment). *See generally* LaFave, *Search And Seizure, A Treatise On The Fourth Amendment*, volume III, § 1.6 (1978), criticizing the general view.

[20] *See, e.g., Collier* v. *Miller*, 414 F.Supp. 1357 (S.D. Tex. 1976); *Wheaton* v. *Hagan, supra* note 17; (*Stroeber* v. *Commission Veteran's Auditorium*, 453 F.Supp. 926 (S.D. Iowa 1977); *Gaioni* v. *Folmar, supra* note 3. These cases permit Section 1983 suits against the authorities in their individual capacities. However, since the Supreme Court's decision in *Monell* v. *Department of Social Services*, 436 U.S. 658 (1978), local governments and coliseum authorities are also subject to suit. *See, e.g., Chenkin* v. *Bellevue Hospital Center*, 479 F.Supp. 207 (S.D. N.Y. 1979); *Nakamoto* v. *Fasi*, 635 P.2d 946 (Hawaii 1981).

[21] *Nakamoto* v. *Fasi, supra* note 20.

[22] *Supra* note 20.

[23] *Id.* at 1359–61.

[24] *Id.* at 1360.

[25] *See, e.g., United States* v. *Edwards*, 498 F.2d 496 (2d Cir. 1974) (airport); *United States* v. *Skipwith*, 482 F.2d 1272 (5th Cir. 1973) (airport); *United States* v. *Bell*, 457 F.2d 1231 (5th Cir. 1972) (courthouse); *Downing* v. *Kunzig*, 454 F.2d 1230 (6th Cir. 1972) (courthouse); *McMorris* v. *Alioto*, 567 F.2d 897 (9th Cir. 1978) (courthouse).

[26] *Collier* v. *Miller, supra* note 20, at 1362. *But cf. Chenkin* v. *Bellevue Hospital Center, supra* note 20, at 214 (warrantless search of hospital employees' clothing and baggage upon exit from hospital upheld under a similar screening procedure: "[T]he public's interest in controlling pilferage from public institutions is nevertheless substantial and legitimate").

[27] *Collier* v. *Miller, supra* note 20, at 1362–64.

[28] *Terry* v. *Ohio, supra* note 9.

[29] *Collier* v. *Miller, supra* note 20, at 1365.

[30] *Schneckloth* v. *Bustamonte, supra* note 9.

[31] *Collier* v. *Miller, supra* note 20, at 1366–67.

[32] *Id.* at 1367.

[33] *Wheaton* v. *Hagan, supra* note 17. Over a 3-year period, 494 events accommodated over a million customers, 838 of whom were arrested. Of those arrested, 818 were for possession of marihuana and controlled substances and 12 for weapons possession. Of the total number of arrests, 743 were at rock concerts. On one occasion, the rock performer, Elton John, was hit on the head by a bottle thrown from the audience.

[34] *Id.* at 1138–43.

[35] *Id.*

[36] *Id.* at 1148.

[37] *Supra* note 20.

[38] *Id.* at 933. A year later, the same Des Moines Auditorium search policy was again subjected to judicial scrutiny in *State* v. *Carter, supra* note 14 when the Exclusionary Rule was brought into issue subsequent to a search, seizure of drugs, arrest, and prosecution of a patron at a rock concert. The court held that warnings on tickets, at doors, and on tape recorded messages were at best ambiguous and no implied consent could be drawn from them.

[39] *Supra* note 3.

[40] *Id.* at 11–12.

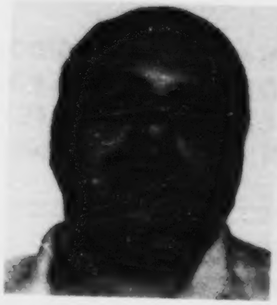
[41] *Id.* at 14–15.

[42] *Id.* at 15.

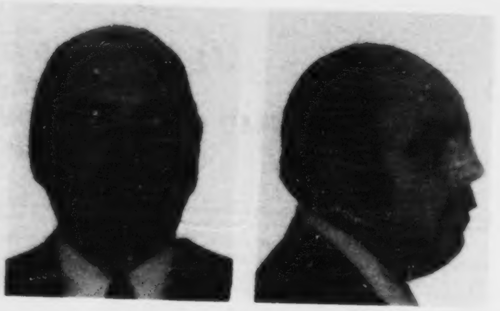
[43] *Id. Supra* note 20.

[44] *Id.* at 951–52.

# WANTED BY THE FBI



*Photograph taken 1978.*



*Photographs taken 1975.*

**Frank Joseph Lach**

Frank Joseph Lach, also known as John Cole, William Englis, Frank Lach, Frank J. Lach, Frank J. Lach, Jr., Frank James Lach, Frank Joseph Lash, Jr., Gabriel Macedo, Kenneth Robinson, Frank Russo, Frank Tobin.

**Wanted for:**

Interstate Flight—Attempted Burglary

**The Crime**

Lach, a professional criminal and con man, has been convicted of breaking and entering, grand larceny, and obtaining money through fraud and larceny. He was last reported posing as a sewer inspector to gain entry into business establishments which he burglarized.

A Federal warrant was issued for his arrest on December 14, 1979, in Albany, N.Y.

**Description**

| | |
|---|---|
| Age | 41, born November 23, 1940, Providence, R.I. |
| Height | 6'. |
| Weight | 240 to 270 pounds. |
| Build | Heavy, fat. |
| Hair | Brown, balding. |
| Eyes | Brown. |
| Complexion | Medium. |
| Race | White. |
| Nationality | American. |
| Occupations | Butcher, pizza parlor manager, plasterer, salesman. |
| Remarks | Lach is considered a professional criminal who poses as a local public servant to gain entry into business establishments which he proceeds to burglarize. |
| Social Security Nos. Used | 028-38-0591<br>038-28-5091<br>038-82-5091<br>038-28-0591. |
| FBI No. | 398 547 E. |

**Caution**

Lach may be accompanied by an associate, Donald Eugene Webb, one of the Ten Most Wanted Fugitives, who is charged with the murder of a police chief. Lach and Webb should be considered armed, dangerous, and escape risks.

**Notify the FBI**

Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone number of which appears on the first page of most local directories.

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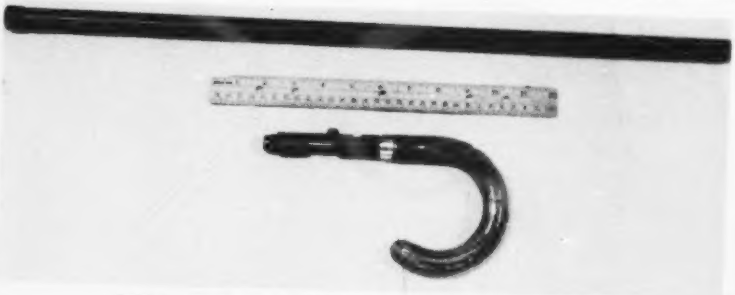
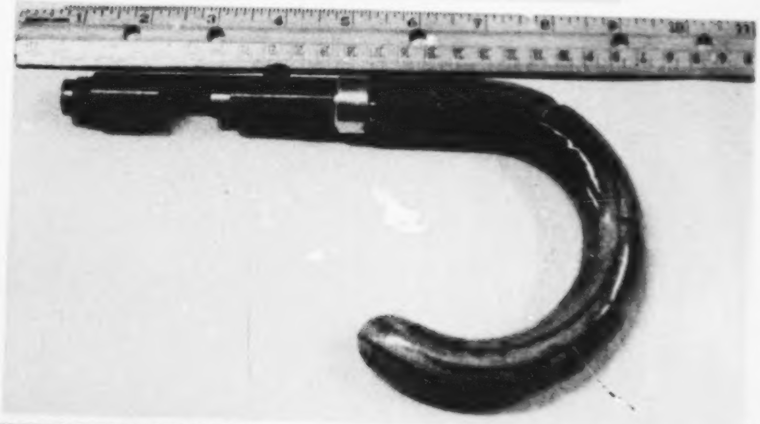
# Cane Gun

Close inspection of a walking cane revealed it to be a black powder weapon capable of firing a cap and ball. When the top portion of the metal cane is removed, black powder and a ball may be placed in the opening. The handle is then attached to the longer portion of the cane, and a firing cap is placed on the extension within the opening in the handle section. When the spring-loaded screw on the handle is released, it strikes the firing cap, igniting the powder that fires the lead ball.

Because this is a black powder weapon, no regulations apply, allowing it to be sold over-the-counter or at flea markets.

*(Submitted by the Tipp City, Ohio, Police Department.)*





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# Interesting Pattern

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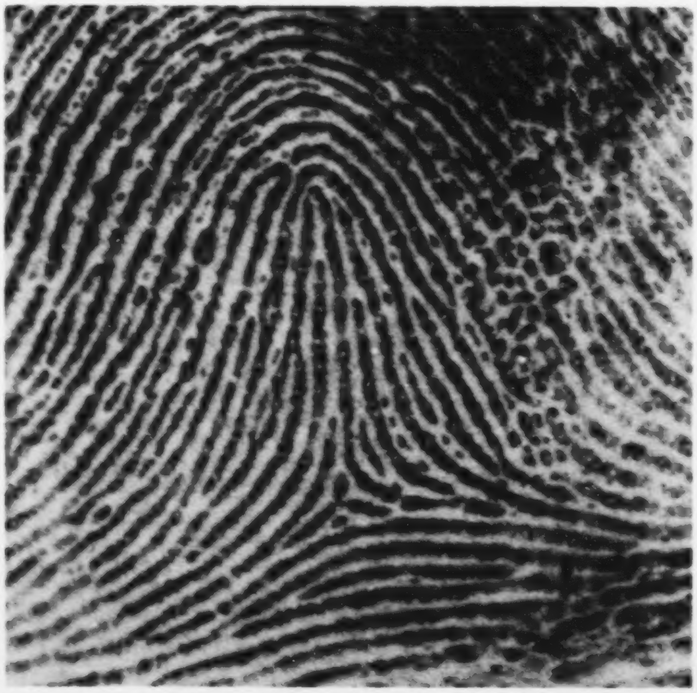

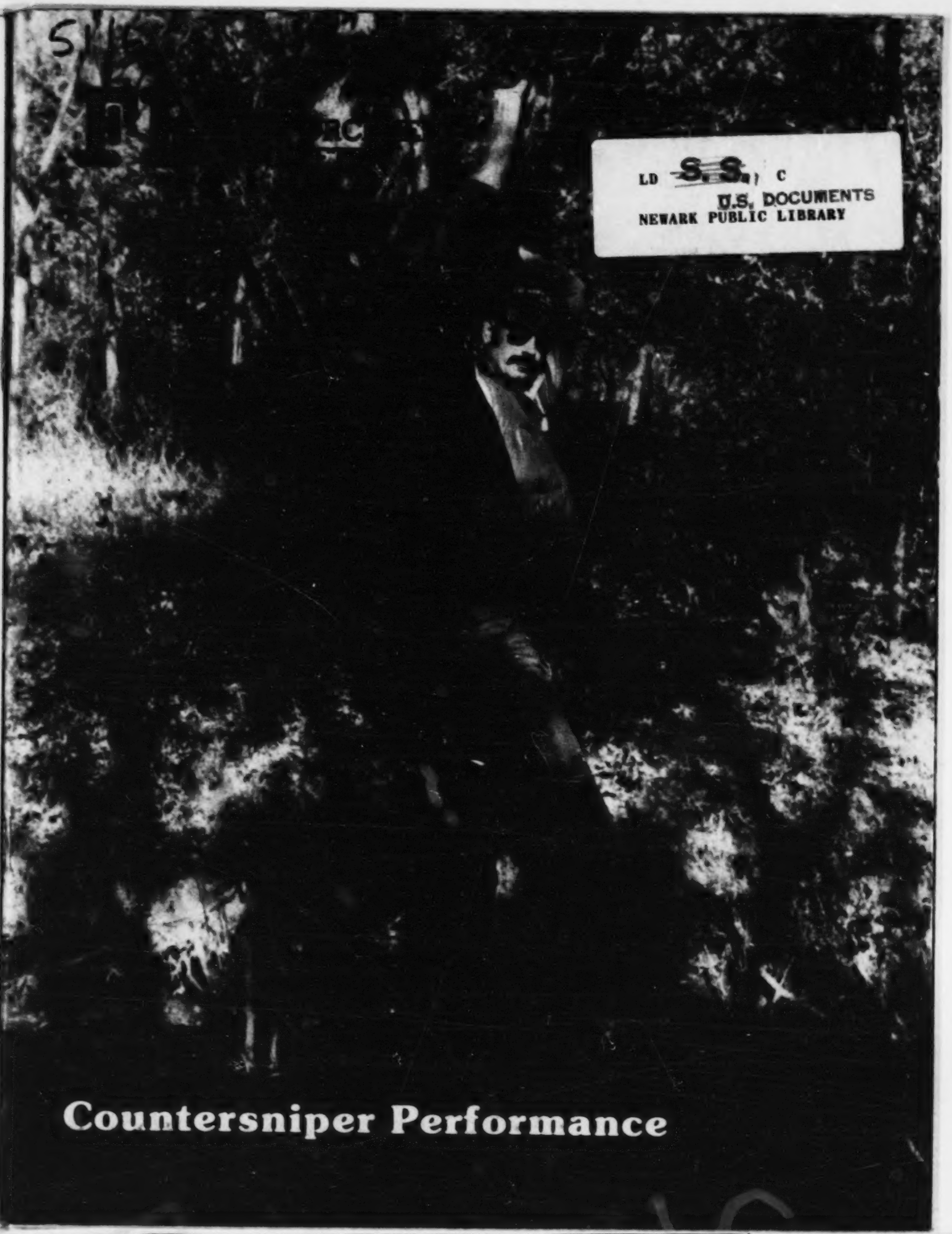

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# Countersniper Performance

**FBI** LAW
ENFORCEMENT
BULLETIN

JUNE 1982, VOLUME 51, NUMBER 6

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Officers training for countersniper teams must move through obstacle courses with full equipment. See article, p. 1.

**Federal Bureau of Investigation**
**United States Department of Justice**
**Washington, D.C. 20535**

**William H. Webster, Director**

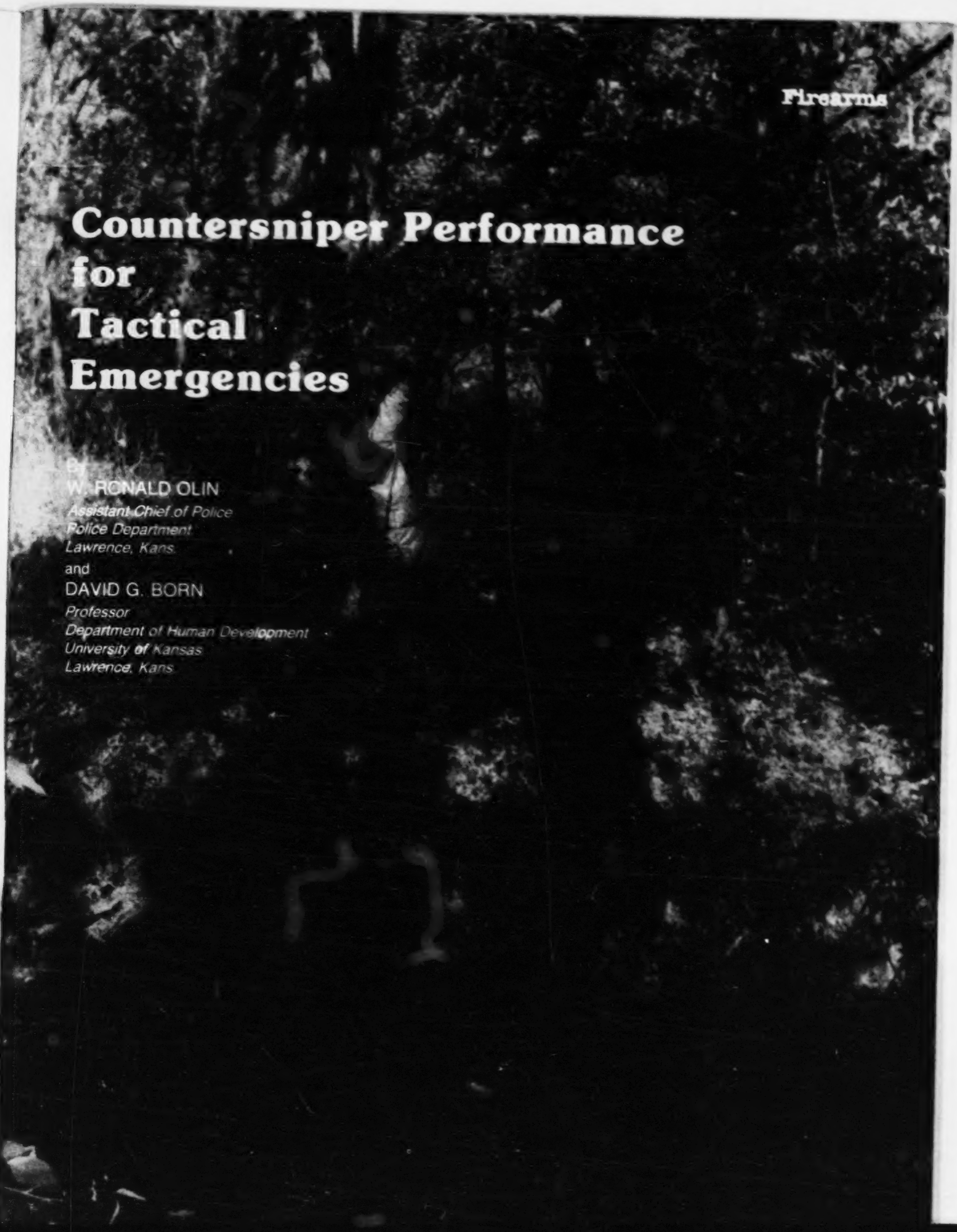
The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through February 21, 1983.

Published by the Office of Congressional and Public Affairs,
Roger S. Young
Assistant Director

*Editor*—Thomas J. Deakin
*Assistant Editor*—Kathryn E. Sulewski
*Art Director*—Kevin J. Mulholland
*Writer/Editor*—Karen McCarron
*Production Manager*—Jeffrey L. Summers

ISSN 0014-5688 USPS 383-310

J1.14/8:

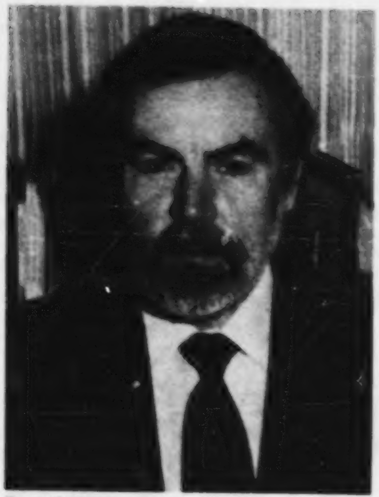


Firearms

# Countersniper Performance for Tactical Emergencies

By
W. RONALD OLIN
*Assistant Chief of Police*
*Police Department*
*Lawrence, Kans.*
and
DAVID G. BORN
*Professor*
*Department of Human Development*
*University of Kansas*
*Lawrence, Kans.*

*W. Ronald Olin*



*David G. Born*

Many law enforcement agencies have tactical units designed to handle specialized police situations. One of the most perplexing problems with these units is their proper training, further aggravated by the traditional expectation of cross-training personnel in all duties of the unit. The responsibilities of tactical units are complex, and in some cases, dissimilar. Specific tasks, such as police countersniping, are not amenable to the kind of unstructured training frequently used when all team members are generalists. Cross-training in these duties may result in mediocre performance and limited success when the unit is activated. An alternative organization for tactical units was suggested in a previous article published in the *FBI Law Enforcement Bulletin.*[1] This article extends this earlier work by outlining a strategy for selecting, training, and evaluating personnel for use on countersniper teams and suggests deployment procedures to optimize countersniper performance.

## Background

The Lawrence, Kans., Police Department has had a tactical unit, sometimes called Special Weapons and Tactics (SWAT), since 1974. This tactical unit has participated in numerous training programs and has attempted to remain current with new developments in the field. Until recently, countersnipers were selected from the tactical unit based on marksmanship with a bolt-action rifle. These officers were additionally expected to train fully in all other facets of tactical unit activities. This configuration proved to be very inflexible and hampered training by leaving little time for countersnipers to perfect the shooting techniques sometimes needed for an actual assignment.

In July 1980, the tactical unit was reorganized and divided into two basic groups—an assault team which specialized in inner perimeter techniques and countersniper teams. The countersniper teams were modeled after West German countersnipers (Prazisionshutzen-Kommandos). The three-man team includes a team leader (responsible for unit security and radio communication), a primary shooter, and a secondary shooter. A team with this depth is expected to stay on post for extended periods of time and handle multiple assignments. Training includes long-range photography, surveillance, and shooting skills. The countersniper team functions as the "eyes" of the command post by providing ongoing intelligence information. Additional surveillance assignments outside of a tactical configuration may also be handled by these teams.

## Personnel Selection

The countersniper team was opened to any police officer on the Lawrence Police Department or Kansas University Police Department. (The Kansas University Police Department actively participates in all phases of the crisis response team, including command, intelligence, negotiations, assault, and countersniper teams.) The nine best rifle marksmen were divided into three teams. Under the rigors of the biweekly training which followed, three members withdrew during the first 3 months. Two countersniper teams were organized with the remaining personnel.

*R. Richard Stanwix*
*Chief of Police*

## Personnel Training

A training schedule was developed for the teams. In an attempt to promote realism, specific scenarios which simulated actual conditions to which the teams might be exposed were developed. Some scenarios, for example, involved driving to a remote location, exiting a police vehicle with full equipment, and establishing a fire position from the rooftop of a nearby building. This procedure was timed and repeated until significant improvement was noted. Other scenarios included engaging multiple targets, moving targets, and other precision shooting at distances associated with urban police deployment. All scenarios included physical exercise, the uncertainty of deadlines, timed performance, stress, and the demand of excellence.

Scenario training proceeded for 8 months, and team members were exposed to situations under varying light and weather conditions. However, there was one recurring question: How long can a countersniper stay on post without relief and still perform within the required limits of speed and shooting accuracy? Because no literature

***TABLE 1***

| Scenario Duration (Min.) | Order of Scenario | First Shot Last Shot | Shooter A | | Shooter B | | Shooter C | | Average | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | Sec. | In. | Sec. | In. | Sec. | In. | Sec. | In. |
| 3 | 3 | F | .78 | .7 | .87 | 0.0 | .5 | 1.5 | .72 | .73 |
| | | L | .51 | .7 | 1.43 | 0.4 | .47 | 1.0 | .80 | .70 |
| 22 | 7 | F | .46 | .6 | .62 | 0.0 | .21 | .6 | .43 | .40 |
| | | L | .53 | .8 | 1.66 | 1.0 | .87 | .4 | 1.02 | .73 |
| 30 | 8 | F | 1.78 | 1.1 | .47 | .6 | .62 | .3 | .96 | .67 |
| | | L | .49 | 1.0 | .84 | .8 | 1.65 | .4 | .99 | .73 |
| 43 | 6 | F | .62 | .6 | No Data | | No Data | | | |
| | | L | .63 | .8 | | | | | | |
| 60 | 9 | F | 1.50 | 1.1 | .28 | .3 | .45 | .5 | .74 | .63 |
| | | L | .98 | .8 | 1.83 | .5 | .71 | 1.3 | 1.17 | .87 |
| 62 | 2 | F | .77 | .5 | .50 | .6 | .38 | .7 | .55 | .60 |
| | | L | 1.21 | .8 | .55 | .8 | .45 | .5 | .74 | .80 |
| 78 | 5 | F | .40 | 1.8 | .32 | .3 | .19 | .8 | .30 | .97 |
| | | L | .57 | 2.5 | 1.44 | .2 | 2.26 | .3 | 1.42 | 1.00 |
| 90 | 10 | F | No Data | | 1.10 | .3 | .28 | 1.0 | .69 | .65 |
| | | L | | | 1.35 | .3 | 1.35 | .1 | 1.35 | .20 |
| 101 | 4 | F | .49 | .3 | .65 | .4 | .53 | .1 | .55 | .27 |
| | | L | .52 | 2.6 | 3.89 | .4 | .62 | .4 | 1.67 | 1.13 |
| 119 | 1 | F | 1.31 | .5 | .25 | 1.2 | 1.0 | 1.1 | .85 | .93 |
| | | L | 2.30 | 1.2 | .50 | 2.4 | .5 | .3 | 1.10 | 1.30 |

dealing with this question was readily found, an experiment was conducted to evaluate countersniper performance over prolonged periods of time.

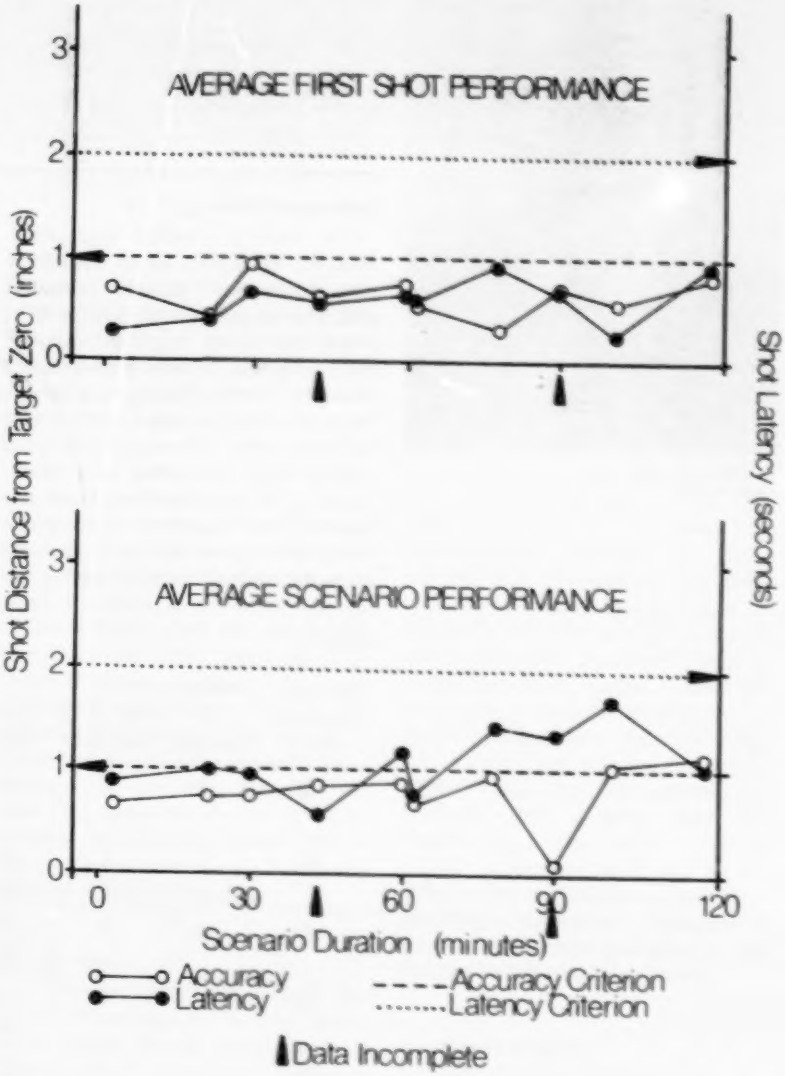
## Method

Ten scenarios were prepared to evaluate two dimensions of countersniper performance over separate 2-hour test periods. These scenarios differed from each other only in the amount of time the shooters remained in the fully alert position before being given a command to fire. Over the 120-minute test period, 10 different delays were selected, and the order of presentation of these 10 scenarios was determined quasi-randomly so that the shooters would have no basis for anticipating when they would be called upon to fire. The duration of each delay and the order of the scenario may be determined from table 1.

The critical dimensions of countersniper performance were shooter *accuracy,* measured as the point of bullet impact from target zero, and shooter *latency,* measured as the time between command to fire and delivery of the shot. Instructions detailing each week's scenario were placed in sealed envelopes and given to team leaders just prior to each training session. No shooters were permitted to read the contents. Extensive briefings were conducted with countersniper teams to explain the importance of following orders and not attempting to subvert the study. Ongoing interviews with team leaders and shooters were conducted to prompt further compliance with the security needed for this study.

For each scenario, a shooter stood at a firing line located 75 yards from a stationary target and was told to prepare to fire. The team leader positioned himself some distance behind the marksman so his behavior would

*Figure 1*



*Average shot accuracy and shot latency on each of the test days arranged in order of scenario duration. Each shooter was ordered to prepare to shoot, and when ready, was given a command to fire. The accuracy and latency of this first shot was then recorded. (See upper panel.) Subsequently, shooters were ordered back to the ready position and a scenario began. The scenario terminated after an unpredictable amount of time with a second command to fire. These data are shown in the lower panel. Only one scenario per week was run. The reader might note that two scenarios were run without all shooters present. (See table 1.)*

not provide cues for the marksman's subsequent performance. The team leader, who was equipped with a digital stopwatch, then gave a command to fire. The timelapse between the command to fire and when the shot was delivered was measured and recorded. Targets were then marked and the shooter was allowed to adjust rifle scopes, using an additional shot if he desired. The scenario then began.

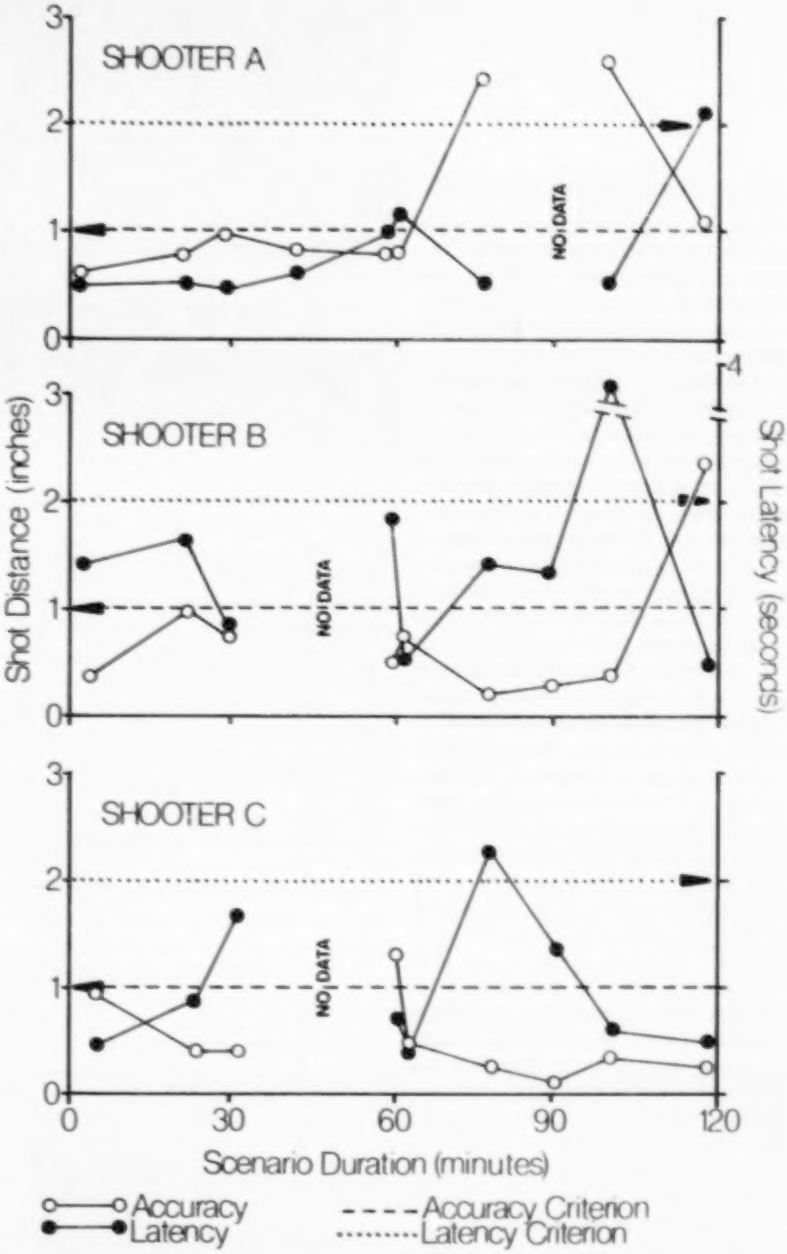
During the scenario, shooters maintained a "ready" posture until ordered to "fire." Once the order was given, the time between this final order to fire and the final shot was also recorded. This procedure provided data on shooting with a "cold-clean," a "cold-fouled," or a "hot-fouled" barrel. The targets were again marked and retained for study. At the end of each session, targets were submitted, along with a written report of the activity.

**Results and Discussion**

The overall results of this experiment are found in figure 1, which shows average shooter accuracy and average shot latency for each scenario. The upper panel in figure 1 shows average shooter performance during the scenario (i.e., on the final shot). Only three of the four shooters were studied because of equipment failure and replacement of one team member. Prior to the inspection of these data, minimum performance standards for a countersniper were set. These standards call for a shot to be delivered within 2 seconds of a command to fire and for that shot to be within 1 inch of target zero. These criteria are indicated as horizontal lines in both of the panels of figure 1.

The data in figure 1 indicate that countersnipers may be left at their post for approximately 2 hours without an appreciable loss of performance. Only

*Figure 2*



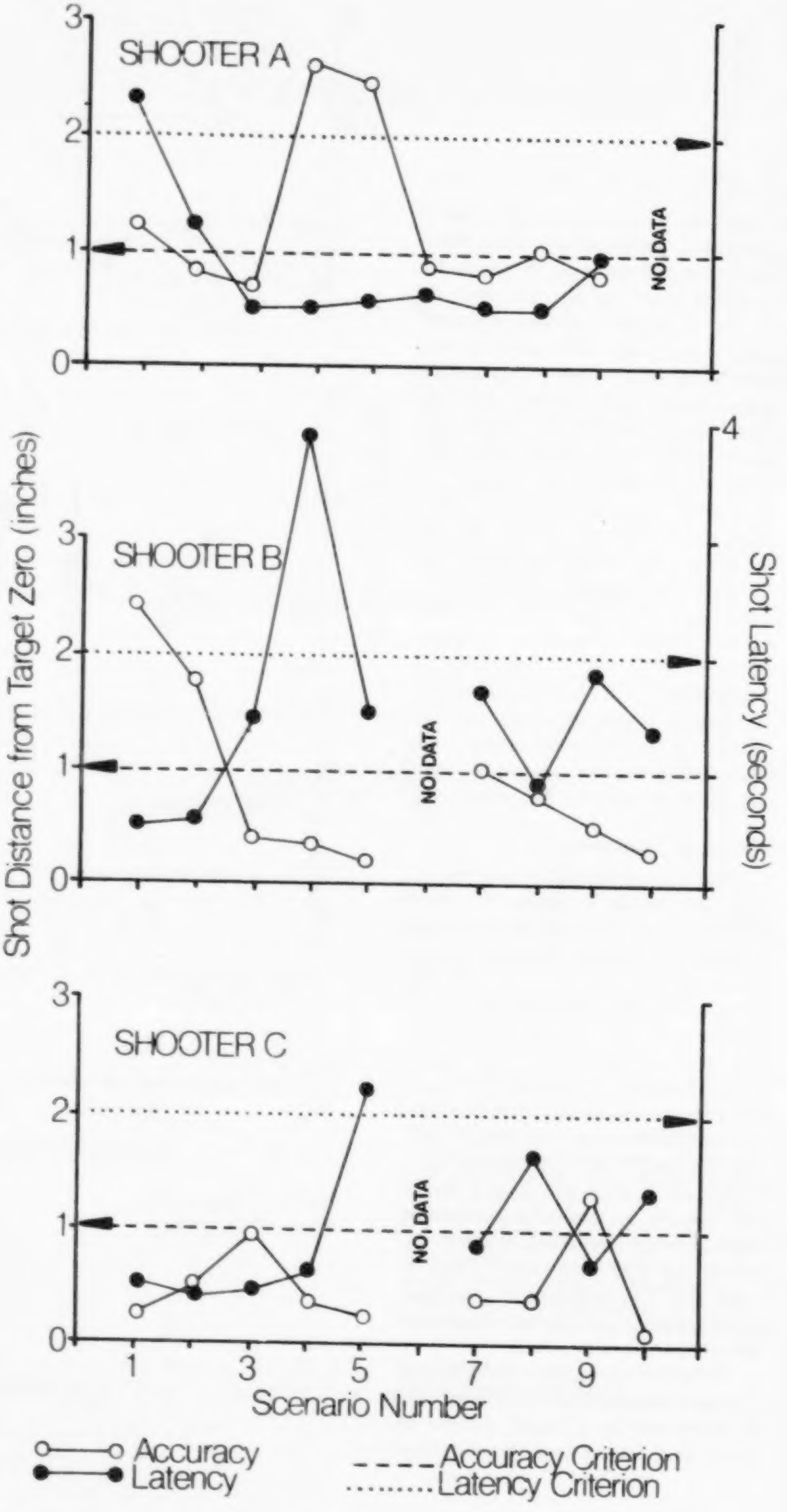
*Individual shooter accuracy and latency under the scenario condition, with the scenario arranged in order of increasing duration.*

during the longest scenarios did average shooter performance exceed the accuracy criterion, and while average shot latency increased during the second hour, it was still acceptable, on the average.

Individual countersniper profiles for the 10 scenarios appear in figure 2, which shows individual shooter accuracy and latency for each scenario. As expected, data for individual shooters show considerably more variability than appears in the grouped data of figure 1. In fact, these data reveal several instances in which an individual shooter failed to meet one of the minimum standards.

A comparison of first shot and last shot data in figure 2 reveals some interesting details about our countersniper performance. First, although countersnipers were held at full alert for up to 2 hours before being called upon to fire, nearly half (44 percent) of these final shots were at least as accurate as the first shot fired on the same day. Second, in comparing the latency of first and last shots on each day, it took the shooters longer to fire their last shot (under the scenario) in 81 percent of the cases. This analysis is consistent with the preceding analysis of these data in suggesting that the primary effect of requiring countersnipers to remain fully alert for long periods of time (up to 2 hours) is an increase in shot latency rather than accuracy, although both show deterioration with increases in time.

*Figure 3*



*Individual shooter accuracy and latency under the scenario condition, with the scenarios arranged according to the order in which they were run.*

*Countersniper team with equipment.*

Figure 2 also reveals some important characteristics of individual shooters that need to be considered to optimize countersniper deployment. Through at least the first hour on post, *all* shooters performed to countersniper standards. Any substandard performance occurred during the second hour on post. Further, it is interesting to note the differences that emerged in the pattern of substandard performances across shooters. Shooter A, for example, failed to meet the accuracy criterion on 75 percent of his shots during the second hour, but only one of these shots exceeded the latency criterion. Over the same period, Shooter C was within ½-inch of target zero on each of his five shots, but his latency did exceed the 2-second criterion on occasion. Finally, Shooter B appears to be somewhere between these two extremes, with one very errant shot (nearly 2½-inches from target) and a different shot which was almost twice the allowable latency.

The arrangement of performance criteria by the order of the scenario seems to indicate that some changes in shooting technique occurred early in the experiment. (See figure 3.) The performance of both Shooter A and Shooter B was highly variable early in the experiment but less variable in later scenarios. While we are not able to identify the cause of these variations, the data are suggestive of improved performance, and perhaps, an indicator of the value of realism in tactical training.

Several other major changes occurred among shooters who participated in scenario training. Stress and many physical ailments, such as eye focus problems, muscle cramps, headaches, and other difficulties, were regularly reported at the onset of training. Many of these same problems are found in actual tactical deployments. They are rarely reported during target qualifications. In the present experiment, the complaints subsided by the fourth week as the officers improved their physical conditioning and attitudes to the extended waiting associated with countersniping.

**Personnel Evaluation**

The individual shooter profiles suggest a deployment strategy which is somewhat more conservative than that suggested by the averaged data available in figure 1. While average shooter performance indicates that shooters are generally capable of performing up to minimum standards for nearly all of the 2-hour period, individual profiles reveal that the likelihood of a substandard performance increases during the second hour. Thus, a more conservative and optimal plan for deployment would relieve each shooter after 1 hour on post. However, in case of an emergency in which it was necessary to keep a shooter out for longer than 1 hour, the available data suggest that shooter C would be the best choice for such an assignment.

**Conclusion**

The use of scenarios has proven to be an invaluable training aid that also provides a detailed record of each officer's shooting skill. Shooters are tested in a variety of situations, many of which are more difficult than actual

*Countersniper team on post.*

*Countersniper team in training. Some scenarios involved obstacle courses, carrying full equipment, before shooting.*

deployment. The chronological analysis of data suggests that shooters improve their performance through the scenario experience. Weapons and equipment failures are exposed in the realistic training situations, and officers find that they will or will not have the ability to remain on post as needed. Individual data may also be compiled from these experiments for feedback to the shooter.

This kind of research may provide the beginning of empirical studies to assist law enforcement decisionmaking. The use of scenario training permits deployment decisions to be made by command personnel with a more complete knowledge of each officer's ability. Scenario-trained teams shoot better under a wide variety of conditions, and in the event of an actual shooting, the records present an accurate audit of the training and proficiency of each shooter for court review of the use of deadly force. It is our belief that these reasons make the use of scenarios a preferred method of training countersniper teams. **FBI**

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**Footnote**

W. R. Olin, "Tactical Crisis Management: The Challenge of the 80's," *FBI Law Enforcement Bulletin*, vol. 49, No. 11, pp. 20–25.

# Serious Crimes in the Nation Showed Virtually No Change During 1981

The number of serious crimes in the Nation recorded by the FBI's Crime Index showed virtually no change during 1981 as compared to 1980.

Violent crime rose 1 percent last year, while property crime remained relatively stable, according to preliminary FBI Uniform Crime Reporting statistics. However, the volume of reported crime reached an alltime high in 1980.

Among the violent crimes reported to law enforcement, only robbery showed an increase—6 percent. Murder dropped 3 percent, aggravated assault fell 2 percent, and forcible rape declined 1 percent in volume.

Of the property crimes reported, motor vehicle thefts dropped 4 percent, burglaries decreased 1 percent, and larceny-thefts showed no change.

Cities with populations over 50,000 recorded a 1-percent increase in Crime Index offenses reported to police during 1981, while the suburban and rural areas each registered declines of 1 percent. Collectively, cities outside metropolitan areas maintained nearly the same volume as the year before.

Regionally, the Southern States registered a 1-percent increase in Index crimes; the Northeastern and Western States each showed no change; and the North Central States recorded a [illegible]-percent decrease.

For the first time, trends for arson, the fourth property crime, were available. Arson offenses reported to law enforcement in 1981 dropped 8 percent from 1980. Like the historical Crime Index total, the Modified Crime Index total, which includes arson, remained at virtually the same level as the previous year.

# Training Firstline Police Supervisors

## A New Approach

By
JACK B. MOLDEN
*Professor*
*Police Training Institute*
*University of Illinois*
*Champaign, Ill.*

It was 7:58 a.m., Monday morning. As the students found their name cards, they seated themselves around the U-shaped table. The talk was laconic, glances guarded and cool. At the podium, framed by the green chalkboard, the instructor readied his notes, oblivious for the moment to the wanderings, shuffling, and quizzical glances of the incoming, casually attired students. A few of the younger arrivals moved with an air of familiarity and casualness in the classroom environment, the older men moved with some obvious trepidation—slow, cautious, unsure. At exactly 8:00 a.m., the vested, somewhat formidable looking instructor called the class into session with the greeting, "Good morning, men. Welcome to the first offering of the all new firstline supervisor course."

Since September 4, 1979, there have been eight offerings of the "new and improved" firstline supervision course by the Police Training Institute. The course has been revised and approved by the Illinois State Training Board, and about 180 officers have been trained and returned to their departments.

What preceded this first course—the commitment, the procedures, the problems, and some solutions—should be of interest and assistance to other trainers, supervisors, and law enforcement managers.

### The Police Training Institute

The Police Training Institute is a unit of the University of Illinois at Urbana/Champaign, legally mandated and fully committed to training Illinois law enforcement officers.

For over 25 years, the institute has trained officers from departments of varying sizes in skills ranging from basic law enforcement to executive management. The faculty and staff consist

*Mr. Molden*

of 40 full-time personnel, teaching a range of over 20 different courses.

### New Curriculum Needed

Police supervision has, for many years, been taught at the Police Training Institute. Because of the critical role played by the firstline law enforcement supervisor and the impact of that role on the operation of an agency, supervisory training occupied a high priority at the institute. The course had been offered in the traditional lecture mode, was well attended, and was generally accepted by the students, although it had been recognized for some time that major changes and updating were needed.

The preliminary search for an acceptable curriculum model for supervisory training began in 1977, but a final decision for change was not acted upon until early 1979, when the director and several interested staff members met and decided on overall program goals. The decision to design a completely new course was made at that time. Two staff members accepted responsibility for the design and preparation of the curriculum.

Having failed to identify an acceptable model for the new course, it was decided that one would have to be written. Current literature and courses of instruction were reviewed, and guidance from both staff and police practitioners was sought in developing a curriculum philosophy.

### Philosophical Concepts

In an attempt to devise guidelines for curriculum development, the following philosophical concepts were adopted:

1) The traditional lecture, instructor-centered mode of instruction would be minimized and emphasis would be placed on the performance-oriented instructional method. This teaching mode would give the students an opportunity to practice what they learned while still in the instructional environment.
2) The course of instruction would be directed toward the novice firstline supervisor, who would attend the class either shortly before or shortly after promotion to a supervisory rank.
3) The course content would exclude all extraneous "nice to know" information and focus, instead, on basic supervisory skills.
4) An instructional "team" approach would provide for maximum coordination and instructional continuity.

### Curriculum Development

The most difficult problem initially encountered was determining what material could and should be taught in a 2-week course that would be pertinent to supervisors from all sizes of departments operating under different leadership and management styles.

*Figure 1*

COURSE OUTLINE

| **Administrative Units (11 hours)** | **Hours** |
|---|---|
| Introduction and Orientation | 2 |
| Comprehensive Practical Examination | 4 |
| Examination | 2 |
| Critique/Evaluation/Graduation | 3 |
| **Instructional Units (42 hours)** | |
| Authority and Control | 2 |
| Characteristics and Qualities of Leadership | 2 |
| Contemporary Issues in Supervision | 4 |
| Decisionmaking | 2 |
| Measuring Work Performance and Employee Efficiency | 2 |
| Morale and Discipline | 2 |
| Patrol Supervision | 2 |
| Preparing Goals and Objectives | 2 |
| Principles of Communication | 4 |
| Psychological Aspects of Supervision | 4 |
| Short Range Planning and Work Assignment | 3 |
| Supervisor's Role in Handling Complaints and Grievances | 2 |
| The Supervisor's Role in Management | 3 |
| The Supervisor's Training Function | 6 |
| The Supervisory Process | 2 |
| **Practicals (26 hours)** | |
| Complaints and Grievances Practical | 2 |
| Comprehensive Practical Exercise | 2 |
| Discipline Practical | 2 |
| Evaluation Practical | 3 |
| Patrol Practical | 2 |
| Planning and Decisionmaking Practical | 3 |
| Practical Teaching—Coach-Pupil | 4 |
| Practical Teaching—Roll Call | 4 |
| Principles of Communication Practical | 4 |
| TOTAL HOURS | 79 |

The primary question seemed to be what factors, if any, were common to all firstline police supervisors. Once those factors were determined, it was necessary to design an effective method of teaching that common information.

The answer to this question appeared to be based on a common definition of a supervisor—"one who accomplishes work and meets goals and objectives through the efforts of other people." If that definition is correct, one common factor all supervisors deal with is people. Therefore, all extraneous material not dealing directly with the officer as a supervisor was extracted, and the content of the course was centered around improving the officer's ability to supervise—it is a people-related course. Each block of instruction is designed to help the supervisor understand his relationship to people, sometimes in relation to a particular police function.

The course ultimately totaled 79 hours of instruction presented in 2 weeks. (See fig. 1.)

## Course Organization

Recognizing that each instructional unit is an integral part of the whole course, proper sequencing of the instructional blocks to provide a natural flow of information became a critical concern. It was necessary for the sequence to form a building block effect toward the understanding of supervision. Since blocks of instruction had to be shared among several instructors, continuity also became a concern. How could one instructor build on the previous instruction and lead into the following subject when he was familiar with and interested in only his own subject matter? In most instructional courses where multiple instructors are used, this natural defect is considered a necessary evil. However, we believed that it was imperative that we improve on the traditional delivery mode and resolve this conflict. The instructional "team" approach seemed to be an ideal solution to our problem.

## The Team Approach

Staffing the course began with finding four faculty members with expertise in supervision and management, who were willing to become generalists regarding the entire 79-hour course. They committed themselves to coordinating their material with other instructors, adopting common words, terms, definitions and theories, and becoming familiar with the total course content. They also committed themselves to unusually demanding workloads because of the small group teaching style.

Four qualified staff members were found, and the course began with their commitment to monitor the entire course. Because of this commitment by the staff, the course became a true team effort, albeit a time-consuming and tedious one.

An interesting side result of the presence of all four instructors in the classroom during the initial pilot offering was a warm rapport and camaraderie between staff and students that has not been duplicated. The students responded in a very positive manner to the opportunity to relate to instructors informally and to see them participating on a regular basis in the classroom routine.

**"The team teaching approach has unquestionably been the greatest contributor to the success of the course."**

---

The team teaching approach has unquestionably been the greatest contributor to the success of the course. Because of other teaching commitments and personal requirements, however, it has been impractical to maintain the original team of four; two additional team members have been added.

### Instructional Mode

Performance orientation requires the student to become involved in the instruction in a very significant way. He is allowed to apply his newly acquired skills and knowledge to simulated situations.

For example, a 2-hour block of instruction on morale and discipline is followed by a 2-hour practical exercise where students roleplay in a disciplinary scenario and have an opportunity to both put the principles to use and to see the results. A 2-hour block of instruction in patrol supervision is followed by a 2-hour problem in which the students are broken into four groups of six and given a manpower allocation and distribution problem that is applied to a major case study problem. Another block of instruction, supervisors training function, is followed by student preparation of instructional objectives and lesson plans and the actual teaching of two blocks of instruction—one using the coach/pupil method and the other, roleplay training which is videotaped. During all stages of instruction, student performance is critiqued by a faculty member.

Performance-oriented instruction is far superior to the traditional lecture method, but application of the method requires several components:

1) To allow for adequate student participation, class size must be reduced. Our classes are restricted to 24 students, although a limit of 20 students would probably be better.
2) Performance-oriented instruction requires much more time than the lecture method. However, the additional time used for roleplaying, case studies, and problem solving makes the instruction more meaningful—learning takes place and behavior is changed.
3) Students should be seated in the classroom so they can see and communicate with one another. Although a horseshoe configuration is sometimes used, a semicircle would be preferable when space allows.
4) "Break-out" rooms for practical small group work are another necessity. These are small rooms in which a group of six students solve problems without undue disturbance from others.
5) A much higher ratio of staff-to-student is needed. We typically use four instructors in all small group sessions—about one instructor to six students. It is also important that all instructors understand the material and evaluate student performance on a standardized basis.
6) While working closely with students in small groups in a problem-solving mode is a rewarding experience for the instructor, it is also the most difficult style of teaching and requires a depth of knowledge and skill not needed in an instructor-centered, lecture method of teaching.

### Testing

Although testing has been retained for the purpose of feedback and student performance evaluation, traditional paper and pencil tests have been minimized and evaluation of observable behavior through roleplaying, simulation, and case study has been maximized.

There is a total of 100 evaluation points available to the student over the 2-week class period. A possible 55 points are awarded for the performance of practical problems, while there are only a possible 45 points for written tests.

The planned learning sequence is to teach the skill or principle, have the student perform the skill or apply the principles, then critique and evaluate the student's performance. Feedback to the student in the form of a critique and a number grade is immediate.

Students record their grades, and as the course progresses, are able to determine their score or grade at any time.

### Central City Case Study

During orientation, students are given a copy of the Central City Case Study. This is a profile of a medium-sized police department, with accompanying statistics and facts. The class, divided into four equal study groups, is requested to apply daily instructional principles and concepts to the solution of the case study problem. A considerable amount of time is spent by these groups in applying information, making decisions, and solving problems posed by the study. On the final day of the

**"Performance-oriented instruction is far superior to the traditional lecture method. . . ."**

course, each group reports their solution to the problem to the entire class. Each group's performance is evaluated by a panel of instructors and a group grade is awarded, based on the group's ability to apply theories and concepts learned in class.

The case study exercise not only forces the students to apply their newly acquired knowledge and skills but also requires the student supervisors to learn to work together creatively to solve common problems. The exercise provides a common thread throughout the course, and student solutions and presentations have been of surprisingly good quality, demonstrating considerable mastery of course material.

### Course Textbook

The decision whether to use a course textbook was difficult. One difficulty associated with using a textbook in the presentation of a short course is the obligation to adopt the general organization, definitions, and concepts of the text. This obligation often creates conflicts, particularly when different instructors teach the course. Each instructor, an authority in his own right, has usually developed unique methods of teaching a subject and finds it unduly confining to tailor his material to correspond with a textbook. Conversely, and equally important, it is virtually impossible to find a text that closely corresponds with the material one wishes to offer.

A textbook used in conjunction with a short course, if properly selected and used, provides organization as well as a background reading source, a coordinating effect between the instructors, and common definitions, examples, and concepts.

Research soon disclosed a wide variety of textbooks on police supervision, none of which completely met our needs. We ultimately selected our text because of its general, traditional approach to the subject. A copy of the text was provided to each student, and they were expected to read the entire book during the 2-week course. Because our course curriculum was still under development when the text was selected, we were able to coordinate the curriculum with the textbook, thereby minimizing conflicts.

An ideal solution to the textbook dilemma would be a monograph produced through the coordinated efforts of the teaching staff. Using a monograph would overcome the deficiencies of a textbook and at the same time would retain the benefits of using a text.

### The Students—A Profile

Some basic statistical data were collected and analyzed for five classes. A total of 111 students were in these classes, with an average class size of 22.

The method used for data collection makes the data particularly susceptible to error, and the data are not intended to represent an accurate statistical treatment. The figures do, however, shed light on the contemporary police supervisor and perhaps indicate some trends.

The average years of police experience reported by the students in the sample (N–111) was 10.4, ranging from 3 to 30 years. The typical student was an experienced police officer, but a relatively new supervisor. There were several cases of older, well-experienced firstline supervisors with 20 to 30 years on the street receiving their first exposure to formal supervisory training. The older, and generally less educated, officers experienced a greater degree of difficulty in the academic areas (reading, speaking, test taking, etc.) but performed quite admirably in practical application, leadership in a group, and decisiveness. The younger, less experienced officers also derived considerable benefit from sharing the experience of the older officers as they worked in problem-solving groups.

The course, while being designed for firstline supervisors, drew officers from a variety of police ranks. The typical class contained 1 officer above the rank of lieutenant (deputy chief, inspector, etc.), 2 lieutenants, 13 sergeants, 2 corporals, and 4 patrol officers. The patrol officers were usually upward bound and had been selected for promotion or were functioning as acting sergeants. Students come from all sizes and types of departments from all over the State, representing county, city, and university police departments.

With the influx of women into law enforcement, one would expect an increase in female students in supervisory courses. This, however, has not been our experience. Thus far, only one female officer, a patrol officer from a university department, has been enrolled in the new course.

One of our most significant findings was the level of formal education found in our sample. Seventy-three percent of the students sampled had some post high school education, 57 percent reported 2 or more years of college, 10 percent had a bachelor's degree or better, 3 percent had a master's degree or better, and one student had a law degree. These figures reflect a movement toward a better educated permanent cadre of police officers—the captains and chiefs of tomorrow.

An overwhelming majority of the supervisory students were alert, cooperative, and highly motivated. They report an increased level of confidence in their ability to perform supervisory functions following training. Students with previous supervisory experience frequently report that although they had generally been doing the "right" thing on the street, they did not understand why. Training confirmed their "gut-level" instincts and increased their confidence and ability to progress professionally.

In spite of an average tenure of 10 years, most of the officers had not become so cynical or demoralized that they were unwilling to try new ideas and innovative approaches. A common student response to modern management and supervisory theory, however, is, "I agree with the concept and I think it will work, but not in our department." Although it is by no means universal, many of the students believe their departments are stagnating and their superior officers are uninspired and unwilling to consider or try new and different management approaches. A large majority of the supervisors in our classes reflect the belief that in their departments, they are neither treated nor do they feel like they are a part of management. They believe that policy is made at higher levels and filtered down to them for implementation. A question frequently voiced by supervisory students is, "Why don't you get the captains, chiefs, and sheriffs down here to teach them this material?"

Perhaps, as more trained supervisors move to higher management positions within the less progressive departments, these types of perceptions will be modified.

## Conclusion

Students in our firstline supervision courses are not being presented new or different information. The information is basic, and for the most part, is traditional supervisory theory and concept. What is different is the method of delivery. Rather than the traditional lecture method of instruction, the information is being presented in a performance mode. The improvement of student response and learning in the performance-oriented course, as compared to the old method, is radical.

Although improvements in the course and its delivery will continue, the primary goal of supervisory training is, we hope, being realized. That goal is better and more efficient supervisory practices at the street level, resulting in better law enforcement. **FBI**

Mulholland

# Cults: A Conflict Between Religious Liberty and Involuntary Servitude?

## (Conclusion)

By
ORLIN D. LUCKSTED
and
D. F. MARTELL*
*Special Agents*
*Legal Instructors*
*Federal Bureau of Investigation*
*Detroit, Mich.*

**Now assigned to FBI Headquarters*

*Repeat and repeat till they say what you are saying.*
*Repeat and repeat till they are helpless before your repetitions.*
*Say it over and over till their brains can hold only what you are saying*
*Speak it soft, yell it and yell it, change*
*To a whisper, always in repeats. Come back to it*
*day on day, hour after hour, till they say what*
*you tell them to say. To wash A B C out of a brain and replace it with X Y Z. . . . This is it.*

"Brainwashing" by Carl Sandburg from his *Harvest Poems, 1910–1960* (New York: Harcourt Brace, 1960).

In parts I and II, we explored some of the legal problems confronting law enforcement when dealing with cults. We discussed the first amendment, certain cult activities, and the quandary in which law enforcement has been placed when investigating and attempting to prosecute cult members. In the conclusion, we will focus on the parents of cult members and the legal and illegal options available to them. In addition, we will discuss problems the investigator or prosecutor can encounter in attempts to prosecute the professional deprogramer or a parent who abducts his child for purposes of removing him or her from the cult environment.

### Civil/Criminal Remedies

As long as cult indoctrination is voluntary, the motivation of an individual for joining a religious cult, however extreme, is not subject to judicial review, because the first amendment protects the freedom to choose any religion.[89] Furthermore, the indoctrination and initiation procedures and conditions of membership of one who joins a religious group are usually not subject to judicial review.[90] However, as discussed previously, those activities that are not solely ideological may be regulated in cases of fraud and/or coercion. While criminal statutes and legal precedents exist, as we shall see in the following discussion, prosecution of cult leaders for serious violations of criminal statutes, such as false imprisonment and kidnaping, are rare. Those criminal statutes most successfully used against extremist cult leaders are those involving violations of immigration laws, panhandling, income tax violations, and health and safety codes.

Efforts by excult members and their families to obtain redress against cults by civil or criminal action in Federal courts have, for the most part, been unsuccessful. A leading case which illustrates the lack of a Federal remedy is *Turner* v. *Unification Church*.[91]

In *Turner*, the plaintiff brought suit alleging that the Unification Church conspired to hold her in involuntary

servitude by threats which placed her in such fear that it destroyed her ability to resist their will. As a result, she was forced to work long hours soliciting money and selling candies, flowers, and tickets for which she received no compensation. Turner sought relief through the provisions of the Civil Rights Act (Title 42, U.S. Code, Sections 1981, 1983, 1985),[92] involuntary servitude (Title 18, U.S. Code, Section 1583),[93] and the 13th amendment.

The U.S. District Court for the District of Rhode Island dismissed her suit for failure to state a claim. The court emphasized that the Section 1981 provision of the Civil Rights Act applied to racial discrimination, not to discrimination because of religious belief; that Section 1983 applied to deprivation of

*Special Agent Lucksted*

*Special Agent Martell*

rights under color of State law, not under a church authority; and that under Section 1985, the church's motive in depriving her of her rights had to be based upon beliefs held by plaintiff prior to her dealings with the church. Finally, the court rejected any remedy under involuntary servitude, stating that elements of both physical restraint and complete psychological domination must be present. As a result, in the absence of clear physical restraint, plaintiff could not show that the church and its followers represented such a threatening and overpowering psychological and/or physical force that plaintiff had no choice but to continue in her service to the church.

The problem that the prosecution has in bringing serious criminal charges, such as unlawful imprisonment or extortion, against cult members in local courts can be seen in the case of *People* v. *Murphy*.[94] In this case, the parents of two young members of a Hare Krishna Temple cult abducted the two and attempted deprograming, which failed when the members escaped and rejoined the cult. The two, at the urging of the cult, then brought charges against their parents and the deprogramers involved. When the case was presented to a grand jury, the grand jury refused to indict the parents; instead, they charged the cult leaders for maintaining the two members in a state of "unlawful imprisonment by psychological means." In addition, grand jury charges against the cult included extortion, as the cult leader allegedly attempted to obtain $20,000 from one member of the family, threatening they would never see their son again.

After inspecting the minutes of the grand jury, the presiding judge dismissed the indictment. The court observed that even if the psychological indoctrination by the cult caused an inability to think or "destroyed healthy brain cells," these acts did not constitute crimes. The maintenance of religious beliefs through highly ritualistic methods like "mind control or brainwashing" in religious indoctrination is not criminal per se.

These cases illustrate that in the absence of overwhelming evidence of fraud or coercion, the search for civil or criminal remedies against cults under State or Federal law will continue to be a difficult undertaking.

## Deprograming

> "Yes, I hired the deprogrammer; what else could I do. I watched my son for years as he was enticed into this cult through 'love bombing' in high school. Did you know when they first approached him they didn't even identify themselves as a religious group? First, there was a free concert, then a picnic. Everyone was encouraged to talk about the problems they were having at home, in school, and with the authorities. Then came the free weekend away from home where they played music, talked, and had a great time. Gradually, my son became overwhelmed; associating home, school and authority figures with trouble, while in the cult everyone loved him and he didn't have to make decisions or be responsible.
>
> "Oh, a lot of it is my fault, I didn't recognize the group for what it was until it was too late. When he started college and started living in their group house, I became concerned. When the cult started

**"Efforts by excult members and their families to obtain redress against cults by civil or criminal action in Federal courts have, for the most part, been unsuccessful."**

> dictating when he could go to school and which courses he could take, I became worried. I tried to talk him out, but the more I talked, the wider the gap between us grew. Then, they wouldn't let him come home for the summer, sending him out recruiting and selling for them instead. This took all his time. Finally, he could no longer think for himself. I didn't know what to do or who to turn to. I couldn't find him, the cult keep transporting him to various places around the country.
>
> "I joined small groups of parents who were in similar situations. I talked with attorneys and psychologists. I spent a great deal of time and money trying to find a way to locate him and rescue him from the cult, while trying to stay within the law. Eventually, after years of trying and finding that I was blocked at every turn I took another route—the deprogrammer.
>
> "It costs thousands of dollars and made me feel like a common criminal, but what else could I do? There was an intelligent mind going to waste. I even went with the deprogrammer to help him rescue my son from this cult and I stayed with them for weeks. Have you ever seen a cult member trance out when you talk to him about the cult? I saw my son go into a state which you couldn't believe; it's a defense mechanism against deprogramming the cult had conditioned him to. His eyes were wide open, yet he did not know anyone else was around. We flashed a flashbulb directly into his face but he didn't even blink, his pupils didn't contract. His surface body temperature dropped to where his skin was cold to the touch. Loud noises didn't startle him. During one of these sessions I couldn't take it anymore. I slapped my son to bring him out of the trance. You know, he finally slapped me back. I revelled, not in my slapping him but in him slapping me back. It showed that he still had some human feelings, some emotion left."

The above quotations were extracted from interviews of parents of a cult member who hired deprogramers. The quotes reveal some of the parental feelings regarding cults, their frustration with the law, and why they frequently turn to the deprogramer as a last resort.

As a result of this natural distress with which parents find themselves and the general absence of successful legal remedies against the cult, parents have often taken it upon themselves to free their offspring by resorting to deprograming. This process involves the hiring of a "professional" deprogramer who abducts the offspring from a public area, detains him in a secluded place, and subjects him or her to a variety of techniques. These techniques attempt to reverse the effect of cult conditioning and restore the confidence and decisionmaking ability of the cult member.

The type of technique varies with the deprogramer. Generally, the deprogramer attempts to show the cult member the error of his ways and destroy the built-up trust he has for cult leaders. He may furnish detailed information on cult behavior, that cult leaders live in luxury while the cult member lives in squalor; that the member's hate or mistrust of his parents is misplaced; that Biblical quotes made by the cult have been taken out of context.[95] The critical point of the deprograming process appears to be the confrontation by the cult member with his parents. If the member accepts the fact that his parents love him, an angry dialog usually follows, at which point the deprograming proceeds rapidly.[96]

Some of these deprograming techniques frequently are similar to the cult indoctrination process itself—isolation of the individual, restriction of the cult member's freedom, restricted diet and sleep. One reviewer has claimed that deprograming is far more like brainwashing than the conversion process by which members join cults.[97] While on the other side, experts assert that deprograming remains the only remedy currently available for the many victims of mind control.[98] There appears to be one undisputed difference between the two views—after deprograming the excult member is not controlled by either the parent or the deprogramer, while if he remains in the cult, his freedom is still restricted.

Often, the forced removal of the cult member from the cult and this counterindoctrination without their consent result in criminal complaints being filed against the parents and deprogramers by the cult member. Once the investigation is initiated, law enforcement often finds the credibility of deprogramers somewhat lessened by the type of deprogramers used by parents. The deprogramers are often people who lack adequate credentials. Some have criminal records or are former cult members who harbor real personal or mental problems; some are in it for the

**"Often, the forced removal of the cult member from the cult and this counterindoctrination without their consent result in criminal complaints being filed against the parents and deprogramers by the cult member."**

adventure. This lack of credibility, plus the fact that the cult member has been forcibly removed from the cult and counterindoctrination initiated without his or her consent, subjects the parents and deprogramer to civil or criminal charges of false imprisonment or kidnaping, though deprogramers, not the parents, are usually the ones named in the complaint.

Deprogramers then resort to a variety of defenses. They often allege that since the cult member is suffering from mental disability induced by the psychological coercion of the cult, consent would have been given if the cult member had possession of his faculties. This defense recently has been recognized by the Minnesota Supreme Court in *Peterson* v. *Sorlien*[99] where the court held:

> "When parents, or their agents, acting under the conviction that the judgmental capacity of their adult child is impaired, seek to extricate that child from what they reasonably believe to be a religious or pseudo-religious cult, and the child at some juncture assents to the actions in questions, *limitation upon the child's mobility do not constitute meaningful deprivation of personal liberty sufficient to support a judgment for false imprisonment.*" [100] (emphasis added)

The court made clear that it was not approving of deprogramming saying, "Owing to the threat deprogramming poses to public order, we do not endorse self-help as a preferred alternative." [101]

Other decisions reveal an apparent attempt by some courts to grant much leeway to the actions of parents and their agents. In *Weiss* v. *Patrick,*[102] the Federal district court in Rhode Island was confronted with a similar fact situation. The plaintiff, a member of the Unification Church, brought an action for false imprisonment against individuals hired by her parents who restrained her against her will in the home of one of the defendants until she escaped. Despite her traumatic experience, the district court found that she failed to demonstrate a meaningful deprivation of personal liberty. The court then emphasized a parental right to advocate freely a point of view. The court stated that to assure freedom, "the right of every person to be left alone must be placed in the scales with the right of others to communicate." [103]

Another defense which is finding a mixed acceptance in the courts is the defense of necessity—that the abduction of the cult member is a rescue from a situation which was dangerous to his or her physical health. Also called the "choice of evils" defense, necessity has some common law roots and is based on a 1962 definition by the American Bar Association which stated that illegal behavior could be justified when "the harm or evil sought to be avoided is greater than that sought to be prevented." [104] There are few cases in the common law involving this defense, apparently because in clear cases of necessity law enforcement officials would not prosecute.[105] The burden of proof in necessity cases is placed on the defendant and as many as three factors have to be established:[106]

1) The actor perceived the action necessary to prevent imminent harm to himself or another;
2) The harm avoided outweighed the harm that the law was designed to prevent; and
3) There existed no reasonable alternates to violating the law.

These requirements pose a great hurdle to a deprogramer's defense. If the cult can show that the member voluntarily chose to accept the cult's rigorous life, there must be evidence indicating imminent harm to the cult member. Furthermore, since deprogramers are open to charges of kidnaping, assault and battery, false imprisonment, and conspiracy, the degree of harm must be significant to outweigh breaking these laws. Finally, if there are legal alternatives, such as conservatorship laws, available as civil remedies, this defense will be put to a great disadvantage.

### Temporary Guardianship/ Conservator Laws

By statute, many States have adopted temporary guardianship procedures by statute through which parents are able legally to retrieve their children from cults under certain circumstances. The wording of the statute is critical.[107] Generally, under these statutes, if a child is judged "incapacitated," "incompetent," or of "unsound mind" by reason of mental illness, mental deficiency, advanced age, chronic use of drugs, or another cause to the extent that he lacks sufficient understanding to manage his property or care for himself, temporary guardianship can be afforded the parents, regardless of the child's age. This offers a means through which parents can take control of their children where they are convinced their children are prevented from exercising free will because of what they consider destructive personality changes resulting from cult indoctrination.

However, such an approach would not go unchallenged. Cults would usually oppose the parents' claims on the basis of violating freedom of religion, speech, or other constitutional guarantees.

## Conclusion

With the increase in cult membership over the last 10 years, law enforcement investigations involving cult members is increasing. Whether these investigations will be routine, such as proselytizing activities on the street, or criminal, such as shoplifting or drug use, the cult member should be treated the same as any other person. A more serious problem arises when an officer encounters a "kidnaping" for deprograming or receives a complaint involving cult coercion by a parent of a cult member.

Clearly, the officer cannot proceed to release the deprogramer after observing him with a hostage or let him retain a person kidnaped against his or her will. Nor can they invade the property of a cult to release a victim, unless there is evidence of imminent harm to the cult member.

Practical considerations would come into play at every stage, which would require close coordination with the prosecution. Who should be charged with a crime? What type of changes could be filed? What if the "kidnapers" include a close relative? What jury is going to convict a 50-year-old father for kidnaping his 20-year-old son! And if the State cannot prosecute the father, is it just to charge the deprogramer who was hired by the father to perform the actual kidnaping? What defenses does the law allow in the jurisdiction, and what charges should be given to the jury? Law enforcement officers may wish to consult with their local prosecutors to determine whether any guidelines are in place or being contemplated in their jurisdictions to answer these questions.

Such practical considerations should not be left to law enforcement alone. Parents of cult members should be advised in seminars of the practical disadvantages of deprograming, i.e., the expense, subjecting themselves to criminal charges of kidnaping, assault and battery, etc. Even if one child was deprogramed every day, the population of cults would hardly be affected, considering the number of recruits entering cults.

The most effective remedy probably is new legislation. The most suggested type of legislation has been new conservatorship laws, but efforts by concerned parents to cause the enactment of such laws have met considerable opposition by civil libertarians.

A more realistic law would aim at and criminalize the less controversial areas of cult behavior—misrepresentation in recruitment and in proselytizing activities, preventing a member from contacting individuals outside the organization, or preventing members from leaving the cult. Currently, attempts are being made in Congress to control cults by drafting a new Federal law, the "Deceptive and Coercive Organizational Practices Act." This act imposes a fine and/or prison sentence on any organization that falsifies facts in recruitment of new members and/or coercively prevents an individual from having contact with individuals outside the organization or terminating their affiliation with the organization.

Whether such an act can be drafted in such a way as to avoid interfering with a person's right to enter a cult if he voluntarily chooses to do so remains to be seen. Whatever the result, it would seem that new legislation is needed to resolve the problem facing parents and law enforcement. The coercive acts of some cults in recruitment and proselytizing activities should not go unchallenged. Nor should some cults be allowed to hide behind the first amendment, while at the same time denying constitutional rights to some of their followers. As U.S. Supreme Court Justice Arthur J. Goldberg said, ". . . while the constitution protects against invasions of individual rights, it is not a suicide pact." 108

**FBI**

**Footnotes**

[89] *United States* v. *Seeger*, 380 U.S. 163, 85 S. Ct. 850, 13 L.Ed. 2d 733 (1965).

[90] *United States* v. *Ballard*, 322 U.S. 78, 64 S. Ct. 882, 88 L.Ed. 1148 (1944).

[91] 473 F. Supp. 367 (D.R.I. 1978), *aff'd.*, 602 F.2d 458 (1st Cir. 1979).

[92] 42 U.S.C. 1981 is the equality of rights statute; 42 U.S.C. 1983 sets forth a civil action for deprivation of rights; 42 U.S.C. 1985 governs any conspiracy to interfere with the civil rights of others.

[93] Criminal statutes often create civil causes of action, even though the only express sanctions are criminal. *See Cort* v. *Ash*, 422 U.S. 66, 95 S. Ct. 2080, 45 L.Ed. 2d 26 (1975) in which the U.S. Supreme Court listed four factors which must be considered before a private cause of action for damages can be implied from a criminal statute.

[94] 98 Misc. 2d 235, 413 N.Y.S. 2d 540 (Sup. Ct. 1977).

[95] Gunther, "Brainwashing: Persuasion by Propaganda," *Today's Health*, February 1976; T. Patrick and T. Duleck, *Let Our Children Go!* (New York: Ballentine Books), pp. 25-26.

[96] Patrick, *supra* note 95, at 25-26.

[97] John E. Lemoult, "Deprogramming Members of Religious Sects," *Fordham Law Review*, March 1978, p. 606.

[98] Conway and Siegelman, "Have Cults Created a New Mental Illness?" *Science Digest*, January 1982, p. 92.

[99] 299 N.W. 2d 123 (1980), *cert. denied*, 450 U.S. 1031 (1981).

[100] *Id.* at 129.

[101] *Id.*

[102] 453 F. Supp. 717 (D.R.I.), *aff'd*, 588 F.2d. 818 (1st Cir. 1978), *cert. denied*, 442 U.S. 929, 99 S. Ct. 2858 61 L.Ed. 2d 296 (1979).

[103] *Id.* at 722.

[104] Model Penal Code Sec. 3.02 (Proposed Official Draft, 1962).

[105] The classic cases in which the necessity defense were raised involved cannibalism *The Queen* v. *Dudley and Stevens*, 14 Q.B.D. 273 (1884) and mutinies *United States* v. *Borden*, 24 Fed. Cas. 1202 (D.C. Mass. 1857); Modern use of this defense frequently occurs in cases involving prison escapes. *People* v. *Unger*, 66 Ill. 2d 333, 362 N.E. 2d 319 (1977) (where conviction was reversed because necessity defense was not submitted to jury).

[106] "Cults, Deprogrammers, and the Necessity Defense," *Michigan Law Review*, vol. 80, No. 2, December 1981, p. 271.

[107] See, e.g., Colo. Rev. Stat. Sec. 15-14-101(1) (1973); Conn. Gen. Stat. Anno. Sec. 45-72 (West) (1980); Ga. Code Anno., Sec. 49-604 (1978); Ia. Code Anno., Sec. 633.558 (West) (1972); Ky. Rev. Stat. Anno., Sec. 387.740 (Baldwin) (1982; Mass. Stat. Anno., 201 Sec. 14 (1977); R.I. Gen. Laws, Sec. 33-15-8 (1956); S.C. Code, sec. 21-19-50 (1976) Tex. Prob. Code Anno., Sec. 131 (1977).

[108] *Kennedy, Attorney General* v. *Mendoza-Martinez*, 372 U.S. 144, 83 S. Ct. 503, 9 L.Ed. 2d 644, 160 (1963).

# The Whole Tooth and Nothing But the Tooth

By
NORMAN D. SPERBER, D.D.S
*Forensic Odontologist*
*Coroner's Office*
*San Diego, Calif.*

Having run out of gas, a motorist made a startling discovery as he walked past bushes off California's Interstate 8 highway, near San Diego State University—a decomposed body wrapped in a bedspread. This discovery was the final piece of a jigsaw puzzle that would allow El Cajon investigators to charge a young couple with the beating-murder of a 22-year-old male victim.

This homicide case is believed to be the first in which a single tooth found in one city (El Cajon, Calif.) proved to be from a body discovered in an adjacent city (San Diego, Calif.), resulting in the identification of a decomposed victim.

Two weeks prior to the discovery of the body, the El Cajon Police Department investigated a car swindle complaint on the same day that a local motel owner reported blood stains, a tooth fragment (fig. A), and signs of a struggle in a room. A damaged bloody towel bar was found in one of the motel's trash cans. (See fig. B.) Routine checks with hospitals and the San Diego Coroner's Office failed to reveal any beating victims with corresponding injuries.

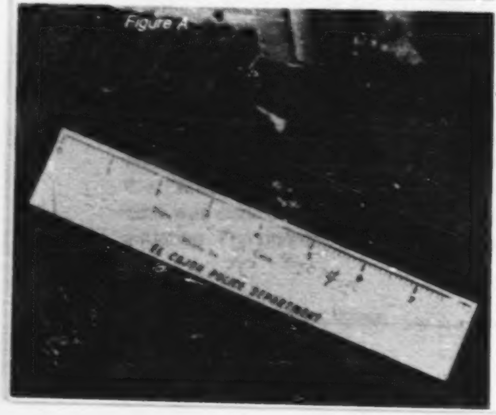


*Figure A*

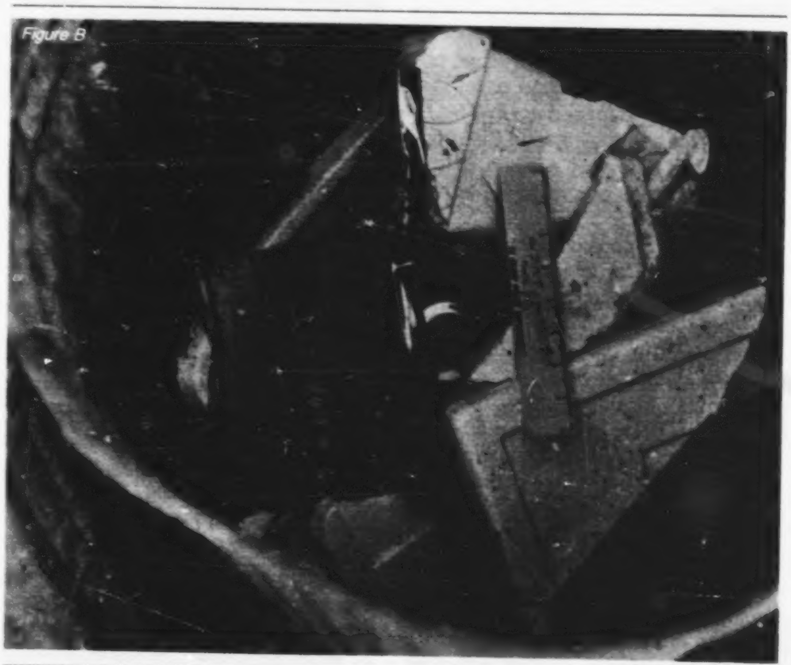


*Figure B*

The physical descriptions of the departed motel room occupants appeared to match those of the couple involved in the car swindle. Apparently, they had fled with a victim's $1,500 after offering to sell him a stolen car.

When detectives from El Cajon investigating the swindle contacted the detectives from San Diego investigating the case of the decomposed body, it appeared that there might be a connection between the two cases, since the upper jaw of the murder victim was fractured, and some teeth appeared to be missing.

Two days later, a postmortem examination of the victim was performed. The upper jaw (maxilla), fractured in three pieces, was reconstructed by mounting the fragments in modeling clay. Numerous dental X-rays of both jaws were taken. When loose teeth found on the body were replaced in their respective sockets, it was discovered that the two front teeth (central incisors) were missing. A fractured tooth from the motel room, supplied by El Cajon investigators, fit perfectly in the bone socket of the left central incisor. (See figs. C and D.) Since the

Dr. Sperber

Figure C

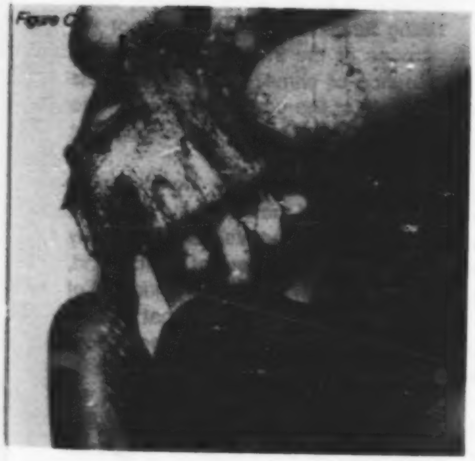
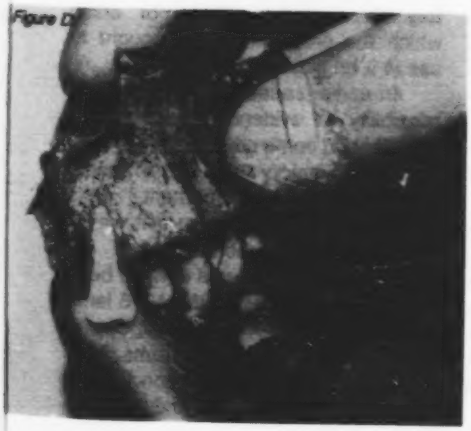


Figure D



murder most likely occurred in El Cajon, the jurisdiction for the homicide investigation was established. The distance between the murder site and where the body was found was approximately 8½ miles.

Amazingly, on the day of the post mortem examination, a man was arrested by a San Diego Police patrolman on suspicion of grand theft after a victim complained of a car scam swindle. Further investigation revealed that the arrested individual was involved in the two previous incidents. The suspect's wife was also arrested, and the couple was booked on suspicion of murder.

Following extensive investigation and the published description of the homicide victim's clothing, an individual contacted investigators with the name of an acquaintance who had been missing for several weeks. He supplied investigators with the names of two San Diego dentists who had treated the missing male acquaintance. Six days following the post mortem examination, having been supplied with dental X-rays and records of the two dentists, it was determined that the missing acquaintance was the murder victim.

Figure E

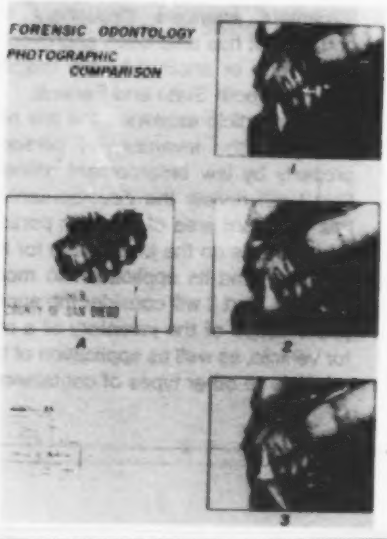
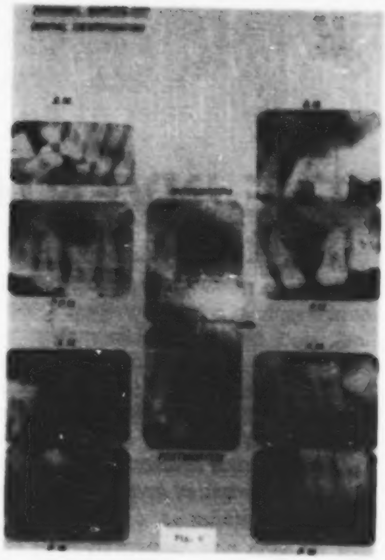


Figure F



The suspects were subsequently tried. Aside from essential dental evidence in both trials, bloody footprints at the motel matched the tennis shoes of the male suspect. It was determined during the trial that the homicide was a drug-related incident.

Trial aids constructed by the San Diego County District Attorney's Bureau of Identification demonstrated the fit of the tooth found in El Cajon in the jaw of the victim (fig. E) and also demonstrated the comparison of the ante mortem with the postmortem dental X-rays. (See fig. F.)

The female suspect in the case was convicted of first degree murder, robbery, grand theft, and conspiracy. She was sentenced to 27 years to life in State prison. Her husband pleaded guilty to second degree murder and robbery and was sentenced to a maximum sentence of 22⅓ years in State prison.

Interchange of information between law enforcement agencies and coroner/medical examiner facilities is essential. This case is illustrative of the cooperation and teamwork between two city police departments, a county coroner's office, and a county district attorney's office in solving a brutal homicide case, convicting two suspects. **FBI**

**The Legal Digest**

# THE INVENTORY SEARCH
## (Part I)

By
JOHN C. HALL
*Special Agent*
*FBI Academy*
*Legal Counsel Division*
*Federal Bureau of Investigation*
*Quantico, Va.*

*Law enforcement officers of other than Federal jurisdiction who are interested in the legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.*

During the daily performance of their varied duties, law enforcement officers acquire control over personal property belonging to others. In some cases, the property comes under police control because its owner is arrested; in others, as in the case of motor vehicles, property may be taken into police custody because it is illegally parked, constitutes a traffic hazard, contains evidence or contraband, or because the police have probable cause to believe that it was used in the commission of a crime. In still other cases, property may come under police control quite innocently as the result of traffic accidents or other events which leave the property exposed to the public under circumstances where the owner is unavailable or otherwise unable to make arrangements for its removal or safekeeping.

Law enforcement agencies have traditionally responded to these kinds of situations by conducting an inventory of property thus acquired and then taking appropriate steps for its safekeeping. This procedure has not only been universally practiced by law enforcement agencies throughout the country but has also been approved in some form or another by the majority of courts, both State and Federal.

This article examines the law pertaining to the inventory of personal property by law enforcement officers. Part I will review the development of this important area of law, with particular emphasis on the justification for the inventory and its application to motor vehicles. Part II will consider the appropriate scope of the inventory of a motor vehicle, as well as application of the principle to other types of containers.

### THE INVENTORY AS A SEARCH

To avoid confusion in the later discussion, it will be helpful to dispose of one question immediately: Is an inventory a search within the context of the fourth amendment to the U.S. Constitution?[1]

Because the inventory developed primarily to safeguard property and to protect the police from disputes and claims over lost or stolen valuables, most courts have characterized the procedure as an administrative, caretaking function. After all, it is not the purpose of the inventory to seek out evidence of crime, but to protect the interests of the property owner and to provide a *shield* for the police against civil liability.

Despite the benign, noninvestigatory purpose of the inventory, however, the reality is that its use frequently leads to the discovery of contraband, stolen property, or other evidence of criminal activity, and when that occurs, the *shield* is quickly transformed into a *sword* in the hands of government prosecutors. In fact, almost without exception, the cases in which the police inventory has been litigated are cases in which police conducting the inventory discovered evidence of crime which the prosecutor then sought to use in a criminal trial.

In earlier cases upholding the admissibility of evidence discovered in this manner, some courts took the view that the inventory was not a search under the fourth amendment,[2] while most concluded that even if it was a search, it was a reasonable one.[3]

This question seems to have been effectively put to rest in the 1976 landmark decision, *South Dakota* v. *Opperman*,[4] in which the U.S. Supreme Court proceeded on the assumption that an inventory is a search[5] and made it

*Special Agent Hall*

clear that the appropriate standard by which its legality is to be measured is the fourth amendment standard of "reasonableness."[6]

### Automobile Inventories—*South Dakota* v. *Opperman*

Prior to 1976, the Supreme Court had not directly relied on the constitutionality of an automobile inventory, even though the inventory figured prominently in some earlier cases. In 1967, in *Cooper* v. *California,*[7] the Court considered the inventory of a car which had been impounded under the authority of a State forfeiture statute. The owner of the car had been arrested on narcotics charges and the vehicle seized. An inventory of the vehicle, including the glove compartment, was conducted a week following the impoundment and contraband was found. Although the car was subject to forfeiture under State law, forfeiture proceedings had not begun at the time of the inventory, and in fact, did not occur until 4 months later. Nevertheless, the Supreme Court found the inventory reasonable and stated:

> "It would be unreasonable to hold that the police, having to retain the car in their custody for such a length of time, had no right, even for their own protection, to search it."[8]

The following year, in *Harris* v. *United States,*[9] the Court upheld the use of evidence seized by police from an automobile which had been impounded following the arrest of the owner for robbery. When the vehicle was towed to the impoundment lot, the windows were down and it had begun to rain. The vehicle was thoroughly examined pursuant to a departmental inventory policy. As the officer opened the front passenger side door for the purpose of rolling up the window, he observed a registration card belonging to the robbery victim lying on the metal stripping over which the door closed.

In holding the registration card admissible, the Supreme Court did not decide the validity of the inventory procedure. Rather, the Court concluded that the discovery of the evidence was not the result of a search of the car, but of a legitimate measure taken to protect the car while it was in police custody. Once the officer lawfully opened the door to carry out this caretaking function, the registration card was plainly visible. The Court stated:

> "It has long been settled that objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence."[10]

Then in 1973, in *Cady* v. *Dombrowski,*[11] the Court upheld the warrantless search of an automobile which had been towed to a private garage by West Bend, Wis., police following an accident. Because the incapacitated driver was a police officer from Chicago, and the local police believed he was required to carry his service revolver at all times, they opened the car, including the locked trunk, looking for a weapon. Instead, they found evidence of a homicide. There was no probable cause to support the search.

**". . . it is not the purpose of the inventory to seek out evidence of crime, but to protect the interests of the property owner and to provide a *shield* for the police . . . ."**

The Supreme Court, nevertheless, found the intrusion justified as a caretaking function to protect the community safety:

> "Where, as here, the trunk of an automobile, which the officer reasonably believed to contain a gun, was vulnerable to intrusion by vandals, we hold that the search was not 'unreasonable' within the meaning of the Fourth and Fourteenth Amendments." [12]

Despite the fact that each of the foregoing cases included vehicle inventories, none required the Supreme Court to directly decide the constitutionality of the inventory procedure. In 1976, *South Dakota* v. *Opperman* [13] came before the Court on appeal from a ruling by the South Dakota Supreme Court, which held that an inventory of a lawfully towed automobile was a search under the fourth amendment, and unless limited to the safeguarding of items in plain view, an unreasonable one. The State court reasoned that police had only a duty to exercise "slight care" for protection of the property and that removing objects within plain view and closing windows and locking doors would satisfy this standard of care.[14]

Police officers in Vermillion, S. Dak., had towed an illegally parked automobile to the city impoundment lot. From outside the car, the officers observed items of personal property inside the passenger compartment. Pursuant to a standard police procedure, they unlocked the car and inventoried its contents, including a plastic bag of marihuana in the unlocked glove compartment. All items of personal property were removed to the police department for safekeeping, including the marihuana.

Opperman, the owner of the car, was subsequently convicted of possession of marihuana. Following the reversal of his conviction by the South Dakota Supreme Court, the State appealed to the Supreme Court, conceding that the inventory as conducted in this case was a search, but contending that it was reasonable.

The Supreme Court agreed and reversed the State court ruling. In sustaining the inventory in this case as reasonable under the fourth amendment, the Court pointed to several factors:

1) The lawful custody of the vehicle by the police; [15]
2) The caretaking (noninvestigatory) purposes of inventories; [16] and
3) The diminished expectation of privacy with regard to automobiles.[17]

Because each of these factors has been relied upon to some extent by State and lower Federal courts in interpreting police authority to conduct inventories, it will be useful to discuss each in turn.

## Lawful Custody

In the context of a criminal investigation, police may obviously acquire warrants to seize and search vehicles. Equally clear is the authority to *seize* vehicles without warrants in a variety of circumstances. As noted above, police may lawfully seize an automobile which is subject to statutory forfeiture.[18] Furthermore, vehicles may be seized by police when there is probable cause to believe the vehicle itself constitutes [19] or contains [20] incriminating evidence.

Apart from this "investigatory" authority, however, there exist what the Supreme Court in *Opperman* described as "community caretaking functions," [21] which require police to take vehicles into custody in the interest of public safety and the efficient movement of vehicular traffic. Noting that traffic accidents and parking violations present two such instances, the Court stated:

> "The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge." [22]

Because the seizure of vehicles under such circumstances does not have an investigative purpose, *Opperman* suggests that the caretaking function of seizing the vehicle is hinged to the absence of other reasonable alternatives. For instance, the Court emphasized that Opperman "was not present to make other arrangements for the safekeeping of his belongings." [23] Presumably, if Opperman had been present and could have removed or made other arrangements for removal of his automobile, the police caretaking function would not have been triggered and neither the seizure nor the inventory justified. Subsequent intepretation by State and lower Federal courts has added emphasis to this view.

### Impoundment Not Justified—Other Alternatives

In *United States* v. *Wilson*,[24] the defendant was arrested by local police for a variety of traffic infractions, including driving erratically and in excess of the speed limit. Because the defendant was a nonresident, the officers decided to take him to the police station to post bond. In view of his recently observed erratic driving, the officers concluded that the defendant was incapable of driving his own vehicle to the station, so they called for a tow truck. Before the car was towed, a routine inventory of the vehicle uncovered several weapons, including a sawed-off shotgun, later sought to be used by the Government in a Federal criminal prosecution.

The trial court denied defendant's motion to suppress the evidence, holding that the inventory was reasonable under the fourth amendment. The U.S. Court of Appeals for the Eighth Circuit disagreed, in part, because "The police . . . could have asked for Wilson's consent to search the car, or, in the alternative, requested that Wilson arrange to remove the car himself or to relieve the police from liability for claims."[25] Because the court considered that other alternatives were available, the seizure and inventory of the vehicle were unreasonable.

In *United States* v. *Nelson*,[26] the defendant was arrested in his van which was parked in front of his wife's parents' house. After the arrest, one of the officers inventoried the contents of the van, discovering a partially filled box of .45-caliber pistol ammunition. Because a number of people were gathering, the officers had the van towed to a nearby garage where the inventory was resumed and a .45-caliber pistol found. The defendant was subsequently charged with being a felon in receipt of a handgun in violation of Federal law. He moved to have the weapon suppressed as the fruit of an unlawful search.

The trial court recognized that a warrantless inventory of an automobile made pursuant to standard procedures and for the purpose of securing or protecting the car and its contents is a reasonable intrusion under the fourth amendment. However, the court held that "before the need for a legitimate inventory search can arise, the police must have the right to take custody of the vehicle."[27] The court observed that the defendant had not been arrested in a moving vehicle where there were no other occupants or relatives to retain possession, nor was the defendant alone in a strange town with no one to take custody of the vehicle. It noted:

> "Taking the van into custody was not necessary to protect the vehicle or its contents from loss or damage. . . ."[28]

That conclusion was based on the fact that the vehicle was lawfully parked at the time of the defendant's arrest and there were relatives readily available to assume responsibility for its safekeeping. The court suggested the result might be different if the van had been left in a shopping mall parking lot or a motel parking lot where there might be a greater risk of vandalism or theft.

State courts likewise have scrutinized carefully the justifications for seizing the vehicle before judging the reasonableness of a subsequent inventory. *State* v. *Houser*[29] is illustrative.

A Washington state trooper arrested the defendant for making an improper turn in an automobile, obstructing an officer, and driving while his license was suspended. The vehicle, at the time of arrest, was parked off the roadway next to a parking lot. Before taking the defendant to jail to post bond, the officer asked what he wanted done with the vehicle. In response, the defendant provided several names of individuals to call. The officer contacted one of the individuals who agreed to come to get the car. Before his arrival, however, the officer decided to impound the car instead and called for a tow truck. A routine inventory of the vehicle was then conducted. Contraband was discovered and seized.

The Washington Supreme Court reversed the defendant's conviction, holding, in part, that there was no justification for the impoundment of the car. The court noted that the vehicle had not been abandoned; it was not impeding traffic; there was no showing by the State that the vehicle threatened public safety or convenience in any way; and the police could have taken the reasonable alternative of

**". . . as a general rule, lawful custody or impoundment of a vehicle is a requisite to a lawful inventory."**

locking the car and leaving it parked on the public street, inasmuch as it was midday and there was no indication that the defendant would be detained for long at the police station. The court concluded:

> "It is unreasonable to impound a citizen's vehicle following his or her arrest when there is no probable cause to seize the car and where a reasonable alternative to impoundment exists."[30]

This view was endorsed in a similar State case, where the court observed:

> "In determining whether an inventory search is proper and reasonable, the threshold question is whether the prior impoundment was proper since the need and justification for the inventory arises from the impoundment."[31]

### Impoundment Justified

Just as the foregoing cases illustrate circumstances which do not justify police impoundment of a vehicle, the following decisions demonstrate situations which justify impoundment because reasonable alternatives may not exist.

In *United States* v. *Hall*,[32] police officers arrested the two occupants of an automobile for public intoxication. The vehicle was parked at a closed service station and it was shortly after midnight. The vehicle was inventoried pursuant to impoundment, and a sawed-off shotgun was found. In sustaining the defendant's conviction, the U.S. Court of Appeals for the Fifth Circuit ruled that seizure of the shotgun could be justified as a lawful inventory conducted pursuant to a legitimate impoundment of the car. The court noted that the officers were justified in arresting the vehicle's occupants for public intoxication and further explained:

> "Given their state of intoxication, neither Hall nor the other occupant was capable of safely driving the automobile to the police station. If it had been left at the service station, the automobile would have been subject to vandalism and might have interfered with the service station owner's use of his property."[33]

More recently, the same court upheld the impoundment of an automobile which was legally parked at the time. In *United States* v. *Staller*,[34] two individuals were arrested inside a shopping center for "uttering a forged note in violation of Florida law." The defendant's automobile was parked outside in the mall parking lot. Pursuant to police department policy, the vehicle was inventoried prior to being towed by a private wrecker service. The inventory uncovered counterfeit money later used to obtain defendants' conviction in Federal court. On appeal, the defendants contended that the police were neither required nor entitled to take custody of a vehicle legally parked in a mall parking lot. The court disagreed:

> "The fact that a vehicle is legally parked . . . does not necessarily negate the need to take the vehicle into protective custody. . . ."[35]

Observing that the vehicle occupants had been arrested and taken to jail, the out-of-state defendants had no friends or relatives available to take care of the car, and there was every reason to believe the arrestees would be separated from the car for an extended period of time, the court reasoned:

> "Although [defendant's] vehicle was lawfully parked and presented no apparent hazard to public safety, the officers were aware that a car parked overnight in a mall parking lot runs an appreciable risk of vandalism or theft. . . . Under these circumstances taking custody of defendant's car was a legitimate exercise of the arresting officer's community caretaking function."[36]

Other cases have upheld the impoundment of vehicles where the driver was arrested and either there was no other occupant to whom the vehicle could be entrusted[37] or other occupants were not legally licensed drivers.[38] In still other cases, impounded vehicles were inoperable due to accidents.[39]

It is clear that as a general rule, lawful custody or impoundment of a vehicle is a requisite to a lawful inventory. However, a recent decision suggests that an inventory may be justified under exceptional circumstances, even though the vehicle is not impounded. In *United States* v. *Scott*,[40] a motorcycle officer in Los Angeles stopped an automobile showing expired registration tags. Shortly thereafter, the officer determined that both the driver and the only other occupant were wanted on outstanding warrants. The officer inquired whether the operator wanted the vehicle impounded or left legally parked at the scene of arrest. The defendant opted to leave the car where it was, stating that he would arrange to have someone pick it up. The officer advised the defendant that he would make the car secure by closing the windows and locking the doors. After the defendant and his companion were taken to jail by another officer, the arresting officer attempted to secure the vehicle, only to discover that not all the doors would lock and the windows would not close. Pursuant to departmental policy, the officer then proceeded to inventory valuables located in plain view within the car, including a treasury check which he had earlier observed lying on the front floorboards. These items were removed from the vehicle and taken to the police station for safekeeping. It was subsequently determined that the check was stolen property of the U.S. Government.

The U.S. Court of Appeals for the Ninth Circuit upheld the inventory, even though there was no preceding impoundment:

> "Even though the car was not in police custody and even though the police may have had no duty to secure [defendant's] belongings, the police procedures to protect the arrestee's belongings were appropriate caretaking functions. . . . Furthermore, the procedures protected the police against charges of dishonesty or negligence that might have arisen had the arrestee's property disappeared. The intrusions necessary to secure [defendant's] property were therefore reasonable."[41]

## Caretaking (noninvestigatory) Purpose

In *South Dakota* v. *Opperman*,[42] the Supreme Court was careful to note that the vehicle inventory which occurred in that case was a standard police procedure aimed at securing or protecting the car and its contents and was not "a pretext concealing an investigatory police motive."[43]

One of the more frequently recurring principles in recent years which characterizes the Supreme Court's view of the fourth amendment is that which holds warrantless searches and seizures to be presumptively unreasonable, subject to a few exceptions.[44] When law enforcement officers have probable cause to believe that evidence of criminal activity is located within personal property, the presumption favors seeking the judgment of a neutral and detached magistrate rather than relying upon the judgment of the officer "engaged in the often competitive enterprise of ferreting out crime."[45]

As the Court noted in *Opperman*, however, frequently the contact between the police and vehicles is "distinctly noncriminal in nature."[46] Because in such cases there is no probable cause to believe that evidence is inside a vehicle, strict enforcement of the warrant requirement becomes impracticable and the appropriate test is whether the intrusion is "reasonable"—a conclusion reached by the Court only after balancing the privacy interests of the individual whose person or property is being subjected to governmental intrusion against the needs of the government or society in conducting the intrusion.

In *Opperman*, the Court recognized three distinct needs to which an automobile inventory is intended to respond:

1) ". . . the protection of the owner's property while it remains in police custody. . . .
2) ". . . the protection of the police against claims or disputes over lost or stolen property. . . . and
3) ". . . the protection of the police from potential danger. . . ."[47]

An automobile inventory, to be reasonable, must be conducted within the context of one or more of these needs.

The Court provided no further elucidation as to the validity of these "needs" which trigger the inventory response, nor the extent to which they create a duty or obligation on the part of police to act. The Court clearly accepted the underlying premises, however, and noted that the overwhelming majority of State and Federal courts have done the same.

Given the community caretaking rationale of the automobile inventory, the courts are confronted with the difficulty of determining in a given case whether the inventory was in fact a benign, caretaking function or an investigative technique aimed at finding evidence without a warrant.

**" 'The decisions . . . point unmistakably to the conclusion reached by both federal and state courts that inventories *pursuant to standard police procedures* are reasonable.' "**

Two questions are relevant in deciding that issue. Was the inventory conducted pursuant to a standardized departmental policy? And, notwithstanding the existence of a standardized policy, was there any indication that the inventory was a pretext to search for evidence?

If the three distinct needs noted by the Supreme Court in *Opperman* are legitimate, then presumably they would arise every time police have acquired lawful custody of an automobile. Failure to have an established policy or practice to conduct inventories in such cases would clearly raise questions with regard to the motivation behind random or selective inventories. The courts have been consistent in requiring that the inventory be a standardized procedure. As the Supreme Court noted in *Opperman*:

> "The decisions of this Court point unmistakably to the conclusion reached by both federal and state courts that inventories *pursuant to standard police procedures* are reasonable." [48] (emphasis added.)

Notwithstanding the existence of a standardized procedure, courts may still find that the inventory was "a pretext concealing an investigatory police motive." [49]

In *Commonwealth* v. *Woodman*,[50] the defendant was arrested while driving his van. At the time of arrest, the police had probable cause to believe that the defendant had committed rape and assault and battery with a dangerous weapon (a knife) and that the van had been the scene of the crime. A search of the defendant incident to the arrest failed to locate the knife, and the van was not searched at the scene. Rather, the vehicle was transported to the police station where it was locked and parked for approximately 48 hours, at which time it was searched and the knife located in a jacket pocket. Following discovery of the knife, other items in the vehicle were not searched.

During a pretrial suppression hearing, the searching officer testified that he entered the van with the intention of conducting an inventory, as well as to search for the missing knife. The Massachusetts Court of Appeals sustained the trial court's ruling that the search did not constitute a valid inventory inasmuch as it was "made in the context of a criminal investigation and not pursuant to a non-criminal inquiry." [51]

Some factors which courts may consider in judging whether an inventory is a pretext for a warrantless investigatory search are illustrated in *State* v. *Killcrease*.[52] The defendant was arrested for driving while intoxicated and his pickup truck inventoried pursuant to a standard procedure. A sawed-off shotgun was found in the vehicle. While recognizing that a valid inventory is an exception to the warrant requirement of the fourth amendment, the Louisiana Supreme Court expressed concern that "law enforcement officials on occasion have attempted to use this procedure as a subterfuge for a warrantless search without probable cause, for the primary purpose of seizing evidence for criminal proceedings." [53]

The court proceeded to list some of the significant factors which could be indicative of subterfuge:

1) "formal impoundment procedures were not followed;
2) "the search was conducted 'in the field';
3) "a tow truck was not called before commencing the search;
4) "the car owner was not asked for his consent to the search, if his car contained valuables, if he would waive an inventory search, or if he could make other arrangements . . . to have someone pick up the vehicle." [54]

In the application of these factors to this case, the court found the inventory was unreasonable. Apart from a question as to whether the search preceded the call for a tow truck (factor no. 3), the court concluded that the officers made no attempt to determine if the inventory could have been avoided and other arrangements made for the safekeeping of the vehicle and its contents (factor no. 4). [55]

*Killcrease*, admittedly not an easy case, sets a strict standard for police to follow and is not necessarily *typical* of the attitudes of other courts with regard to the inventory search. It is, however, the reaction of one court to its concern that an inventory procedure can be in reality a pretext to conduct a warrantless search for evidence of crime. As such, it is an instructive decision.

## Diminished Expectation of Privacy

Finally, as a factor to be considered in testing the reasonableness of an automobile inventory, the Supreme Court in *Opperman* noted the historical distinction recognized by that Court between automobiles and other kinds of property, due in part to the fact that "the expectation of privacy with respect to one's automobile is signifcantly less than that relating to one's home or office." [56] This is so, reasoned the Court, because:

"Automobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements. As an everyday occurrence, police stop and examine vehicles when license plates or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper working order. The expectation of privacy as to automobiles is further diminished by the obviously public nature of automobile travel." [57]

Thus, for practical purposes, an automobile inventory is perhaps no less intrusive than other kinds of fourth amendment searches where the warrant requirement is rigorously applied. Insofar as the privacy interests implicated by that intrusion are less substantial, they may easily be outweighed by the governmental interests in performing such "community caretaking functions."

It is not certain whether the diminished expectation of privacy rationale was essential to the Court's conclusion in *Opperman* that the automobile inventory, conducted pursuant to standard procedure, was reasonable under the fourth amendment. It is quite clear, however, that the privacy rationale has been relied upon extensively by the lower courts in describing the proper scope of the inventory search.

Part II of this article will discuss the post-*Opperman* developments which seek to define the lawful scope of an automobile inventory and further consider the application of the inventory theory to other kinds of personal property.

**FBI**

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**Footnotes**

[1] The fourth amendment states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

[2] *See, e.g., People* v. *Sullivan*, 272 N.E.2d 464 (N.Y. App. 1971); *People* v. *Willis*, 208 N.W.2d 204 (Mich. App. 1973); *State* v. *Hall*, 193 S.E.2d 770 (N.C. App. 1973).

[3] *See, e.g., South Dakota* v. *Opperman*, 428 U.S. 364, 371 (1976).

[4] *Id.*

[5] The Court noted the differing views of the lower courts on this question and observed that the State, on appeal, had abandoned "the contention that the inventory in this case is exempt from the Fourth Amendment standard of reasonableness." *Id.* at 371.

[6] In other recent cases, the Court has applied fourth amendment standards to noncriminal cases. *See, e.g., Michigan* v. *Tyler*, 436 U.S. 499 (1978) (fourth amendment warrant requirement applied to search of burned building in absence of exigency or consent); *Marshall* v. *Barlow's Inc.*, 436 U.S. 307 (1978) (OSHA searches of business premises must satisfy fourth amendment standards of reasonableness); *Delaware* v. *Prouse*, 440 U.S. 648 (1979) (*random* license and registration checks of automobiles held to be "unreasonable" intrusion under the fourth amendment).

[7] 386 U.S. 58 (1967).

[8] *Id.* at 61-62.

[9] 390 U.S. 234 (1968).

[10] *Id.* at 236.

[11] 413 U.S. 433 (1973).

[12] *Id.* at 448.

[13] 428 U.S. 364 (1976).

[14] *State* v. *Opperman*, 228 N.W.2d 152, 159 (1975), *rev'd* 428 U.S. 364 (1976).

[15] *South Dakota* v. *Opperman*, 428 U.S. 364, 369 (1976).

[16] *Id.* at 376.

[17] *Id.* at 367-368.

[18] *Cooper* v. *California*, 386 U.S. 58 (1967).

[19] *Cardwell* v. *Lewis*, 417 U.S. 583 (1974).

[20] *Chambers* v. *Maroney*, 399 U.S. 42 (1970).

[21] *South Dakota* v. *Opperman*, 428 U.S. 364, 368 (1976); *see also, Cady* v. *Dombrowski*, 413 U.S. 433, 441 (1973).

[22] *Id. South Dakota* v. *Opperman*, at 369.

[23] *Id.* at 375.

[24] 636 F.2d 1161 (8th Cir. 1980).

[25] *Id.* at 1165.

[26] 511 F.Supp. 77 (W.D. Tex. 1980).

[27] *Id.* at 81.

[28] *Id.*

[29] 622 P.2d 1218 (Wash. 1981).

[30] *Id.* at 1225.

[31] *People* v. *Schultz*, 418 N.E.2d 6, 9 (Ill. App. 1981); *see also, State* v. *Davis*, 630 P.2d 938 (Wash. App. 1981); *Lee* v. *State*, 628 P.2d 1172 (Okla. Crim. App. 1981); *Shum* v. *State*, 621 P.2d 1114 (Nev. 1981); *State* v. *Thomason*, 265 S.E.2d 312 (Ga. 1980); *State* v. *Hardy*, 384 So.2d 432 (La. 1980); *State* v. *Slockbower*, 397 A.2d 1050 (N.J. 1979).

[32] 565 F.2d 917 (5th Cir. 1978).

[33] *Id.* at 921.

[34] 616 F.2d 1284 (5th Cir. 1980).

[35] *Id.* at 1289.

[36] *Id.* at 1290.

[37] *See, e.g., People* v. *Kramer*, 303 N.W.2d 880 (Mich. App. 1981); *McConnell* v. *State*, 275 S.E.2d 697 (Ga. App. 1981).

[38] *People* v. *Thomas*, 308 N.W.2d 120 (Mich. App. 1981).

[39] *See, e.g., United States* v. *Leonard*, 630 F.2d 789 (10th Cir. 1980); *Martasin* v. *State*, 271 S.E.2d 2 (Ga. App. 1980); *State* v. *Mangold*, 414 A.2d 1312 (N.J. 1980).

[40] 665 F.2d 874 (9th Cir. 1981).

[41] *Id.* at 877.

[42] 428 U.S. 364 (1976).

[43] *Id.* at 376.

[44] *Katz* v. *United States*, 389 U.S. 347 (1967).

[45] *Johnson* v. *United States*, 333 U.S. 10, 14 (1948).

[46] *South Dakota* v. *Opperman*, 428 U.S. 364, 368 (1976).

[47] *Id.* at 369.

[48] *Id.* at 372. Courts differ as to the police burden of establishing the existence of a standardized procedure. Compare *United States* v. *Prescott*, 599 F.2d 103 (5th Cir. 1979) (direct evidence not necessary), with *United States* v. *Hellman*, 556 F.2d 442 (9th Cir. 1977) (police must prove existence of *routine* inventory practice).

[49] *Id.* at 376.

[50] 417 N.E.2d 469 (Mass. App. 1981).

[51] *Id.* at 471. *See also, States* v. *Chivers*, 400 So.2d 1247 (Fla. App. 1981); *State* v. *Young*, 432 A.2d 874 (N.J. 1981); *Smith.* v. *State*, 427 A.2d 1064 (Md. Ct. Sp. App. 1981); *State* v. *Hall*, 279 S.E.2d 111 (N.C. 1981); *Nealy* v. *State*, 400 So.2d 95 (Fla. App. 1981); *Comm.* v. *Benoit*, 415 NE.2d 818 (Mass. 1981); *State* v. *Bramlett*, 609 P.2d 345 (N.M. 1980); *State* v. *Blais*, 416 A.2d 1253 (Me. 1980).

[52] 379 So.2d 737 (La. 1980).

[53] *Id.* at 739.

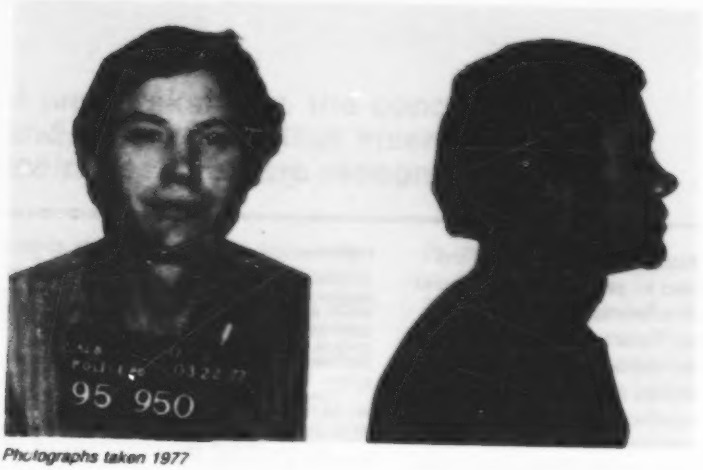
[54] *Id.*

[55] *Id.*

[56] *South Dakota* v. *Opperman*, 428 U.S. 364, 367 (1976).

[57] *Id.* at 368. *See also, Cardwell* v. *Lewis*, 417 U.S. 583, 590 (1974).

# WANTED BY THE FBI



*Photographs taken 1977*

**Bill Clara Killingsworth**

Bill Clara Killingsworth, also known as Bill Killingsworth, Bill Clare Killingsworth, Billy Clair Killingsworth.

**Wanted for:**

Interstate Flight—Kidnaping, Sexual Assault, Escape

**The Crime**

Killingsworth is being sought as an escapee from the New Mexico State Penitentiary where he was serving a life sentence following his conviction on four counts for the crimes of kidnaping and sexual assault.

A Federal warrant was issued for Killingsworth's arrest on June 9, 1980, in Santa Fe, N. Mex.

**Description**

| | |
|---|---|
| Age | 47, born October 18, 1934, at San Perlita, Tex. |
| Height | 5'9". |
| Weight | 155 pounds. |
| Build | Medium. |
| Hair | Brown. |
| Eyes | Blue. |
| Complexion | Fair. |
| Race | White. |
| Nationality | American. |
| Occupations | Buyer, clerk, material investigator, production controller, storekeeper, superintendent of retirement home. |
| Scars and Marks | Scar on chin. |
| Social Security Nos. Used | 490-32-8849;<br>490-32-8949. |
| FBI No. | 819 043 P5. |

**Caution**

Killingsworth, a reported narcotics user, should be considered armed, dangerous, and an escape risk.

**Notify the FBI**

Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone number of which appears on the first page of most local directories.

**Classification Data:**

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Fingerprint Classification:
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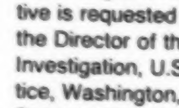

*Right thumbprint*

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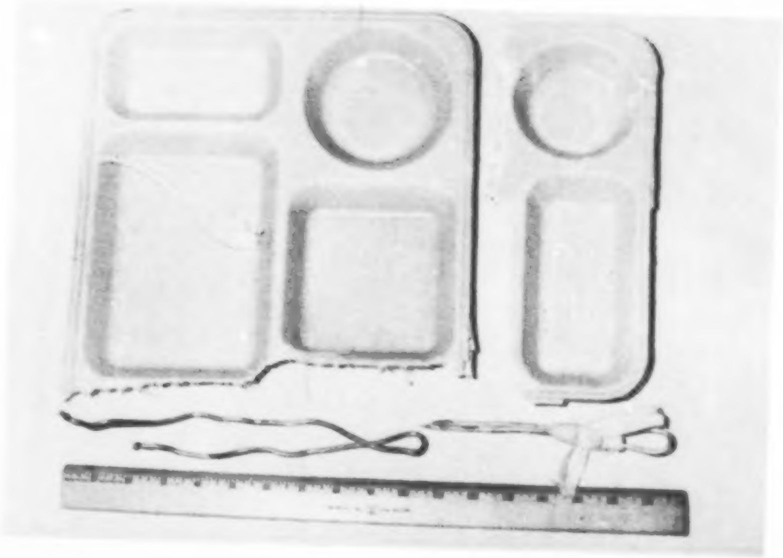
*(Submitted by the Department of Correction, Westchester County, N.Y.)*



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# Questionable Pattern

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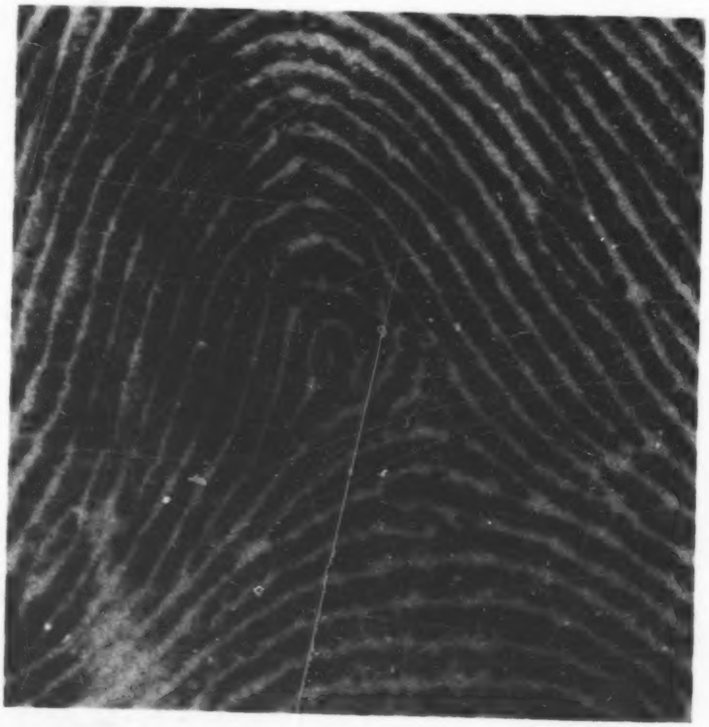

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JULY 1982

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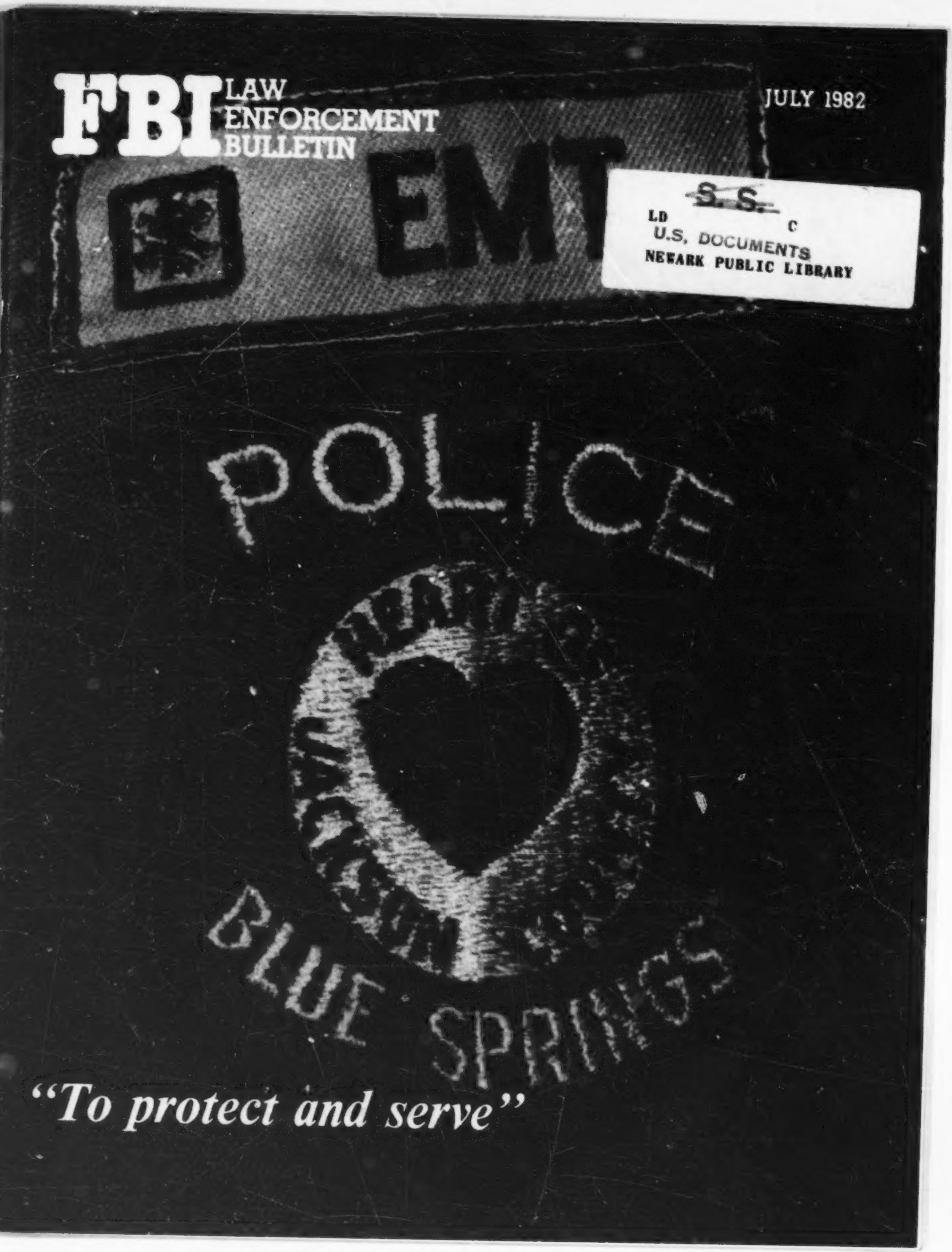
EMT
POLICE
BLUE SPRINGS
JACKSON

*"To protect and serve"*

**FBI LAW ENFORCEMENT BULLETIN**

JULY 1982, VOLUME 51, NUMBER 7

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EMT
POLICE
HEART OF
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BLUE SPRINGS

**The Cover:**
The motto "to protect and serve" has taken on new meaning for the Blue Springs, Mo., Police Department. See article, page 1.

**Federal Bureau of Investigation**
**United States Department of Justice**
**Washington, D.C. 20535**

**William H. Webster, Director**

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through December 28, 1983

Published by the Office of Congressional and Public Affairs,
Roger S. Young
Assistant Director

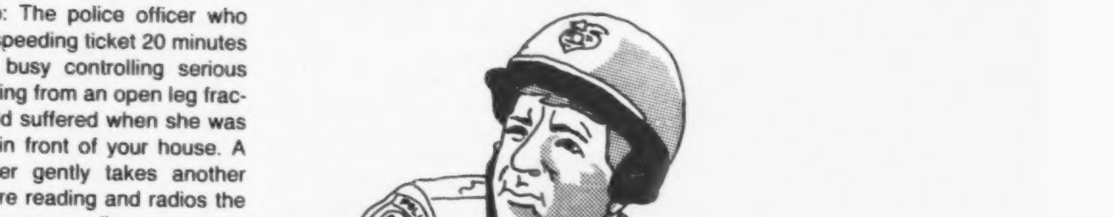
*Editor*—Thomas J. Deakin
*Assistant Editor*—Kathryn E. Sulewski
*Art Director*—Kevin J. Mulholland
*Writer/Editor*—Karen McCarron
*Production Manager*—Jeffrey L. Summers

ISSN 0014-5688 USPS 383-310

# Blue Springs Police EMT Program

By
LOUIS COX
*Director*
*Emergency Medical Services Department*
and
H. L. BROWN
*Chief of Police*
*Police Department*
*Blue Springs, Mo.*

Scenario: The police officer who wrote you a speeding ticket 20 minutes ago is now busy controlling serious arterial bleeding from an open leg fracture your child suffered when she was hit by a car in front of your house. A second officer gently takes another blood pressure reading and radios the information to paramedics enroute to the accident scene to provide advanced medical care. Seem unusual? Residents of Blue Springs, Mo., have discovered this is no longer a rare occurrence.



Mr. Cox

Chief Brown

The Blue Springs Police Department, with the cooperation of Emergency Medical Service (EMS) Department paramedics, is completing the final phase of a program to certify 100 percent of its 24 road patrolmen as emergency medical technicians (EMT's). Beyond the CPR capability required of every city employee in Blue Springs, these officers are trained to recognize and provide emergency management of wide-ranging medical problems resulting from accident or illness.

The proposal to include police officers as an integral part of an advanced EMS system was conceived in 1978. It was theorized that police on patrol were usually first on the scene when a call for emergency assistance was received. Because proper management in the first few minutes of an emergency often means the difference between life and death, knowing what to do was essential for the officers. Moreover, this kind of training might well safeguard paramedic crews and other police officers responding to potential emergencies whose chances of being involved in an accident increase threefold when using lights and sirens. On-the-scene EMT's can provide an educated evaluation of patient condition. If the condition is not life-threatening, other personnel could be advised to flow with normal traffic patterns when responding.

Police EMT's have already had a significant impact on the EMS system in this fast-growing city of 30,000. Computerized EMS Department data printouts reveal one particularly interesting statistic in regard to victims who have been discovered without pulse or respirations—a state of clinical death. In 80 percent of the cases where these patients have been successfully resuscitated (a return of heartbeat and breathing), basic life support in the form of CPR had been initiated by police EMT's before the arrival of EMS paramedics. Once advanced life support was available, the police EMT's remained to assist paramedics, usually providing one officer to drive the ambulance and one to assist with treatment in the patient compartment enroute to the hospital. Many people owe their lives to this dedication.

The use of police EMT's also allows Blue Springs to maintain a second emergency ambulance on "standby" should the primary unit be in use when a second call is received. A designated on-duty police EMT responds to EMS headquarters to drive the standby unit and to assist an EMS standby paramedic in treating patients. This reduces the risk of a 15-minute to 45-minute response time for an out-of-town emergency ambulance.

Blue Springs was fortunate that the basic components necessary to integrate this program effectively into its EMS system were already in place when the proposal was first seriously advocated. These included the State's first 911 emergency telephone network, an all-paramedic EMS Department with persons qualified and willing to teach EMT courses, central dispatching and communications for fire,

**"Because proper management in the first few minutes of an emergency often means the difference between life and death, knowing what to do was essential for the officers."**

police, and EMS, a dedicated body of police officers willing to undertake the extra training and responsibility, an excellent rapport between police and EMS personnel, and a city administration committed to providing budgetary support and extensive community support for the advanced EMS system as a whole.

City managers, mayors, and city councils will have at least three pertinent questions when considering cross-training police as EMT's, including:

1) How much does it cost?
2) How long does it take?
3) What benefits can our city derive from the investment?

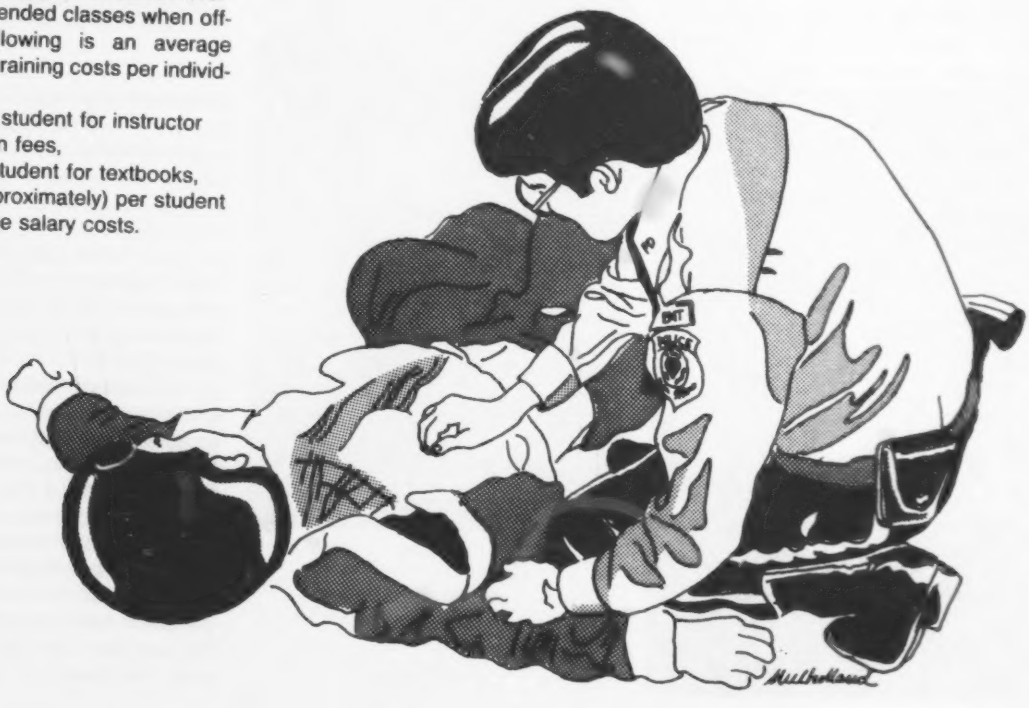
The cost varies, depending upon the city's resources and the extent to which the officers are willing to involve themselves in the program. Blue Springs elected to pay its officers overtime if they attended classes when off-duty. The following is an average breakdown of training costs per individual officer:

1) $125 per student for instructor and tuition fees,
2) $25 per student for textbooks,
3) $300 (approximately) per student in overtime salary costs.

An average State-approved EMT course entails about 120 hours of classroom instruction and 10 or more hours in a hospital emergency room (30 4-hour sessions, 2 sessions per week, 16 weeks of training).

The use of police EMT's increases the quality of emergency care. In many regions, be they rural or urban, there is a significant time lag between the request for an ambulance and the availability or arrival of the needed unit. With a few basic supplies, the police EMT can be a crucial stopgap in the chain of patient care, rendering basic emergency support until the arrival of a qualified mobile medical unit. It may literally be a question of saving lives.

Officers involved in the Blue Springs' pilot program report expanded confidence in their own abilities; some of the other fringe benefits of the training are less easily defined. Perhaps the most important of these benefits—a relatively unexpected benefit—involves how the community perceives the role of the police officer. Patrol personnel have always been considered primarily as enforcers—a new dimension is now emerging. Suddenly, officers are also emergency health care specialists, working desperately at times to preserve life in a nontraditional manner and adding a new freshness to an old motto—"to protect and serve." **FBI**



Management

# Productivity

## A Challenge for the 80's

By
JAMES H. AUTEN
*Police Training Institute*
*University of Illinois*
*Champaign, Ill.*

Productivity—that's what the decade of the 80's is about. How does one get more production from existing resources. Not only must industry in the United States solve the productivity problem but so must police administrators. In general terms, productivity can be defined as the relationship between inputs and outputs. For industry, it is the cost of providing a product to the public compared to the profits the product generates for the company. The more profit that can be generated at the lowest possible cost, the more productive the operation. Number of dollars is the usual measure at the output end of the process while input costs are usually measured in terms of both human and material resources.

Police administrators face similar productivity problems; however, there are some important differences. Over the past few years, the police administrator has seen his resources at the input stage diminish while the need for the product of these resources has increased. This phenomenon is quite likely to get worse before it gets better—if it ever does improve. Certainly, the police administrator who honestly expects to be permitted to hire additional personnel in the next few years is the exception rather than the rule. The prospects for a leveling off of this trend are bleak. As fewer public dollars—all the police administrator has to rely on since his organization does not produce profits—are available, and as other public service agencies in the community are able to provide fewer services to the community, it is highly likely that the demand for services from the law enforcement agency will increase. The demand will not disappear; it will simply shift from one public service agency to another—the police.

As a result, the police administrator is faced with the problem of obtaining more productivity from existing levels of resources, knowing full well that those resources will probably diminish in the future in the face of an increasing demand for the output of those resources. Fortunately, for the police administrator, even though his resources at the input level will not be increased in terms of actual numbers, the resource he has can be expanded. The primary resource of any police agency is the personnel it employs. Approximately 90 percent of the dollar resources of a typical police agency are expended to meet personnel costs. Since the departments' primary resource is people, and since people have the capability of growth through development of unrealized potential, the police administrator has the capability of expanding the output of his resources without having to actually realize an increase in those resources. This potential for increasing the output of the resources without actually increasing the level of resources rests in the concept of improving the job performance of the officers. Productivity can be improved simply by improving job performance of the officers.

There are various alternatives for the police administrator who is seeking ways to improve the productivity of his officers through improved job performance. Methods of managing the demands for service, of more efficiently allocating and deploying patrol personnel, and of developing alternative patrol strategies all hold the promise of improving productivity. Even though the police administrator has some alternatives to employ in this endeavor, the potential for the success of all the alternatives lies in the same source—people and the manner in which they, as individuals, perform their jobs. Accordingly, if the police administrator is to see his organization realize the potential of these alternatives, there must be, within the organization, a system for effectively evaluating the job performance of these individuals. Before job performance can be improved, it is necessary to know both how and how well the job is being done. Only then can ways to expand the productivity of the people and the jobs they do be devised.

## Performance Appraisal Systems

Even though most police departments have performance appraisal systems, most of them are woefully inadequate in terms of suitability for measuring the on-the-job performance of police officers. These systems are predominantly based upon misconceptions of what police officers do. The misconceptions continue to prevail in spite of substantial evidence to the contrary. A quick glance at the instruments used by most police departments in appraising the job performance of officers reveals categories such as appearance, cooperation, loyalty, interest, attitude, judgment, attendance, personal factors, knowledge of work, etc. Most of these evaluative judgments are usually based on numbers of arrests made, traffic citations issued, field interviews conducted, property inspections completed, and crimes investigated.

All of these categories reflect important considerations and duties conducted by the patrol officer, but to a large extent they do not comprise the majority of his on-the-job performance. Numerous research studies have consistently revealed that the vast majority, estimated from 70 percent to 90 percent, of the patrol officer's working day is spent in activities that are not directly related to crime or the enforcement of law. Most of the officer's time is spent in subtle ways of maintaining order within the community or in providing miscellaneous public services to members of the community. If a per-

**"All too frequently, goals are formulated by police administrators in an organizational vacuum with little or no input from other members of the organization."**

---

formance appraisal system is going to assess the quality and quantity of an officer's job performance, it must examine what that officer is actually doing on the job and not what we might think, wish, or hope he is doing. This is the first step in improving job performance and making individuals more productive.

Essentially, the process of appraising the job performance of individual officers is nothing more than evaluating the quality and quantity of their work. When we do this, we are engaged in the process of determining or fixing the value of that work which entails making judgments. However, the process of making judgments that permit us to place some value on work performed is not quite as simple as it may sound. Judgments are usually made relative to certain personal expectations regarding what is being judged whether it be the behavior of our children, friends, boss, or people who work for us. What makes the process somewhat unfair is that we tend to keep these expectations to ourselves—we fail to communicate them to those being judged. As a result, many times persons are being judged by an expectation standard of which they are unaware. It is very difficult to measure up to the expectation of another when we do not know what those expectations are.

Organizations also fail to communicate their expectations to their employees. Most police administrators can probably state the goals of their department within the community, and most police officers probably have a vague notion of the department's goals. However, how many departments have taken the time to both formally consider and formulate these goals, and more importantly, how many departments have formally communicated these goals to every member of the organization? How many departments have further enhanced the probability of attaining these goals by developing specific objectives to be accomplished by each element and individual within the organization? The department may have a goal of crime prevention, but has it communicated its expectations of how each individual in the organization is to contribute to the attainment of that goal? In the final analysis, this is what performance appraisal is all about. It is the process of communicating the department's expectations about the quality and quantity of work performance and then judging the value of that job performance according to those expectations.

The overriding objective of any performance appraisal system should be to permit these value judgments to be made so that performance weaknesses/deficiencies can be identified and corrected in order to improve job performance. At the same time, the appraisal system should identify individuals whose performance exceeds the expectations. More specifically, the objectives of performance appraisal are:

1) To keep employees informed as to what is expected of them and how well they are doing in meeting these expectations;
2) To recognize and reward good work on the part of employees;
3) To recognize weaknesses in employees so they can be corrected;
4) To recognize strengths in employees so they can be built upon;
5) To identify employees who would profit from specific types of training and to identify general departmental training needs;
6) To provide a continuing record of an employee's performance;
7) To guide decisions in matters of promotion, transfer, suspension, termination, and other personnel matters;
8) To verify existing performance standards;
9) To check the accuracy of existing job descriptions or classifications; and
10) To verify the accuracy of recruitment and selection practices.

If these objectives can be attained, it is possible to know *what* employees are doing, *how* they are doing it, and *what* specific steps need to be taken to improve job performance, thereby improving individual and departmental productivity.

Developing an effective performance appraisal process requires the development of an evaluation system which will be comprised of several components. The first of these components, departmental/organizational goals, has already been examined;

however, its importance cannot be overemphasized. To be effective and efficient, organizations need goals. Goals are a general statement of purpose or intent of an organization. They should reflect what the organization is attempting to accomplish in the community, and as such, should mirror the expectations of the community. As communities vary, so will their expectations concerning the police department. A set of goals established by one department for its operations will not necessarily be appropriate for another department in a different community setting.

Another consideration in the goal setting process involves the manner in which the department formulates them internally. All too frequently, goals are formulated by police administrators in an organizational vacuum with little or no input from other members of the organization. The exact opposite should be the case. As mentioned previously, if goals are to have meaning, they must be communicated to and *understood* by all members of the organization. Additionally, members of the organization must perceive the goals as being desirable and attainable, or it will be unlikely that they will expend any effort toward their attainment. Formally seeking and thoughtfully considering the input of organizational members is a necessary step in satisfying these concerns. Only after members of the organization have an understanding of what is to be accomplished can any consideration be given to how it will be accomplished.

Determining how the goals of the organization will be accomplished leads us to the second component in the performance appraisal system—the job description. The job description should contain an item-by-item listing of the principal duties/tasks, responsibilities, and accountability for each position within the organization. It should be a clear statement of the department's expectations of how each position in the organization should function/perform in fulfilling its role in attaining the organizational goals.

If the performance appraisal process is to be effective, there must be a job description for every position within the organization. If a position does not contribute to the attainment of an organization's goals, it should not exist. Each position should influence the overall productivity of the organization. Unless job descriptions exist, individuals have no way of knowing what duties are to be evaluated.

Since job descriptions are of such importance to the performance appraisal process, it is essential that they reflect the job as it is actually being done. The role of the police officer in our society has changed substantially in the past several years and will probably continue to change. As the job changes, so should the job descriptions. Attempting to make judgments about the performance of personnel based upon job descriptions that were written 10 to 15 years ago serves no meaningful purpose. Having valid job descriptions for each position within the organization permits the development of the third component in the performance appraisal system—performance standards.

Job descriptions delineate what individuals in various positions should be doing to further the attainment of organizational goals; performance standards delineate the department's expectations of *how* individuals are to perform in meeting the requirements of the job descriptions. Performance standards should be written for each task/duty listed in the job description. These performance standards become the "yardstick" by which judgments are made regarding the value of individual job performance.

### From Organizational Goals to Performance Standards

An example of the developmental sequence from organizational goals to performance standards would be as follows:

1) *Organizational Goal*—To ensure the safe, efficient movement of vehicle and pedestrians in the community.
2) *Job Description*—To enforce existing traffic laws as appropriate. (For purposes of this example, only one task relating to the goal has been selected—obviously there would be others.)
3) *Performance Standard*—In looking at the single task/duty selected from the job description, there are at least three possible performance standards that need to be developed, including knowledge of existing traffic laws, the parameters of individual officer discretion so that the "as appropriate" expectation might be fulfilled, and the proper completion of traffic citations.

**"It is in the creation of specific objectives that the potential for individual job improvement rests."**

For the purposes of this example, let us use one of the standards cited—the proper completion of the traffic citation. The performance standard might look like this: When completing a traffic citation, officers of this department shall use only a black ballpoint pen. All necessary information will be printed in legible form. Officers should exercise care to ensure that all information is recorded accurately and that all appropriate blocks are completed. At the completion of each tour of duty, officers will turn in their completed citations to their immediate supervisor for review.

Returning to the criteria for a well-written performance standard, this standard can be evaluated as follows:

1) *What is to be done*—Completion of a traffic citation.
2) *How it is to be done*—Officers of this department shall use only a black ballpoint pen. All necessary information will be printed in legible form. Officers should exercise care to ensure that all information is recorded accurately and that all appropriate blocks are completed.
3) *How it is to be evaluated*—At the completion of each tour of duty, officers will give their completed citations to their immediate supervisor for review.

Clearly, the process of developing performance standards for each task/duty contained within a job description and for each job description within the organization is extremely time-consuming. However, it is the only way to develop the criteria necessary to make valid value judgments about the adequacy of individual job performance.

Performance standards must be developed to incorporate all aspects of individual job performance. Currently, most police departments have developed performance standards to measure the aspects of a patrol officer's job performance that directly relate to enforcement of the law and control of crime, such as arrests made, traffic citations issued, field interviews performed, complaints investigated, property inspections completed, etc. It is simply a process of recording and comparing numbers—numbers that can be manipulated. Appraising performance based upon these numbers is a legitimate part of the process, but its significance has been vastly overemphasized. Since much of what a police officer does has nothing to do with crime or enforcement of the law, attempting to base the evaluation of an individual's contribution to the attainment of organizational goals by making judgments based upon the numbers generated from law enforcement-related activities is to base the judgment on only a small portion of the officer's total activity. If the performance appraisal system is to serve its intended purpose, performance standards must exist for those activities that are not directly related to the control of crime or the enforcement of the law. To do otherwise is to overlook most of what a police officer does.

## Specific Objectives

A meaningful system for performance appraisal should include the creation of specific objectives. Up until this point in the developmental sequence, the focus has been on departmental expectations—departmental goals, departmental job descriptions, and departmental performance job standards. While all of these components relate to the successful performance of the job, they do not directly relate to the individual capabilities of the person performing the job. Specific objectives exist to put the performance expectations of the organization into individual terms, i.e., what each individual needs to do to perform the job successfully. Because each of us has different abilities and capabilities, we cannot be expected to perform a given task/duty in exactly the same manner as another individual.

It is in the creation of specific objectives that the potential for individual job improvement rests. When these objectives are created by the supervisors in consultation with each of their subordinates, and an attempt is made to go beyond the maintenance of the status quo, and incentives are provided to motivate subordinates, there is a possibility for improved job performance and increased productivity. In writing specific objectives for individuals, it is important that they be:

1) *Stretching*—Objectives should take the employee beyond their current status performance and personal growth.
2) *Attainable*—Objectives should be realistic in the sense that the individual is capable of reaching the objective. Unless the individual sees the objective as attainable, it is unlikely that he will expend the effort necessary to reach it.

3) *Measurable*—Progress toward the attainment of the objective should be measurable or there is no meaningful way to evaluate progress/growth.

Essentially, when supervisors sit down with subordinates to formulate specific objectives, they are forming a "contract" that becomes the basis for future performance appraisals which, in turn, requires the formulation of new specific objectives for each officer each time the performance appraisal process is conducted. If an officer's performance already exceeds the performance standard, specific objectives should still be formulated if there is ever to be improved performance.

It is quite legitimate for performance standards to reflect the minimum acceptable level of performance expected by the department, acknowledging the individual differences in humans. However, it is important to remember that the ultimate purpose underlying the formulation of specific objectives is to take people beyond their current capabilities.

Although the final component in the performance appraisal system, an incident file, is not mandatory, its existence makes performance appraisal easier. If a performance appraisal system is to be effective, the judgments being made about the value of work performed should be made on the basis of personal observations. Unfortunately, time has a way of blurring the image of how others do their jobs. The "halo effect" commonly experienced by evaluators is a manifestation of the passage of time. Maintaining an incident file helps the evaluator avoid this phenomenon, making the process more objective. This type of file consists of notations on the significant aspects of an individual's performance made either on a regular basis or as they occur. If someone performs some job-related task/duty in a manner that exceeds expectations, that fact should be noted. Conversely, it should be noted when an individual performs a job in a manner that falls below the expectation. Supervisors should log all counseling sessions they have with subordinates following a less-than-satisfactory performance of a task/duty. In this manner, overall, rather than isolated, performance can be evaluated. The incident file should be an open system, accessible to both the supervisor and the subordinate. Keeping a "black book" defeats the intended purpose of the file—open communications between the supervisor and subordinate.

When reviewing the components in the performance appraisal system, it becomes apparent that each component is linked to and builds on the other. The existence of organization/departmental goals requires the development of job descriptions; the existence of job descriptions requires the development of performance standards; the existence of performance standards requires an objective appraisal of progress made in improving job performance. When all of these components are linked in proper sequence, there exists a process that permits the meaningful appraisal of job performance, and more importantly, the process can become a vehicle for individual growth and development, resulting in increased individual and departmental productivity.

Today, most police administrators have already been confronted with the dilemma of "getting more from less." Available evidence indicates that many of them are making a concerted effort to resolve the dilemma, and not surprisingly, they are having some success. While resolving the dilemma in the face of diminishing resources and increasing demands for the product of these resources, the police administrator should find solace in the fact that his primary resource—people—is expandable. Productivity can be improved by improving officer job performance. The key to improving individual job performance is in objectively assessing the value and meaning of each individual's unique contribution to the organization. A valid performance appraisal process permits the assessment of this value. Through its use, it is possible to identify each individual's strengths and build upon them to improve job performance.

The potential of the human resource is the most wasted resource in this country. None of us really come close to realizing our full potential. When we begin to work toward that goal, we will begin to realize our capacity for improvement. Then, and only then, will we begin to solve the "get more from less" dilemma. **FBI**

# The Police Problem Employee

By
HILLARY M. ROBINETTE
*Special Agent*
*Management Science Unit*
*FBI Academy*
*Quantico, Va.*

Police supervisors at all levels are concerned with the marginal and unsatisfactory police employee. They analyze causes and symptoms in an effort to understand and to solve the complex problems of job disaffection, dissatisfaction, contraorganizational behavior, and reduced performance.

With steady increases of cost-push inflation[1] and the attendant effects on the costs of recruiting, selection, and training, police managers are looking more closely at ways to improve the performance of current employees. Those officers and police employees who are judged marginal or unsatisfactory are coming under closer scrutiny by police managers for several reasons. Efforts are being directed at finding the causes of marginal performance and in determining solutions to the problem.

This article explores the issue of the marginal performer in the police department and the changing environments in today's society that have created different employee expectations, and therefore, disaffection and marginal performance. As part of this examination, the article also considers the results of a 1981 survey of police managers' perceptions of employee performance and offers some suggestions for dealing with marginal performance.

## The Clay-Yates Study

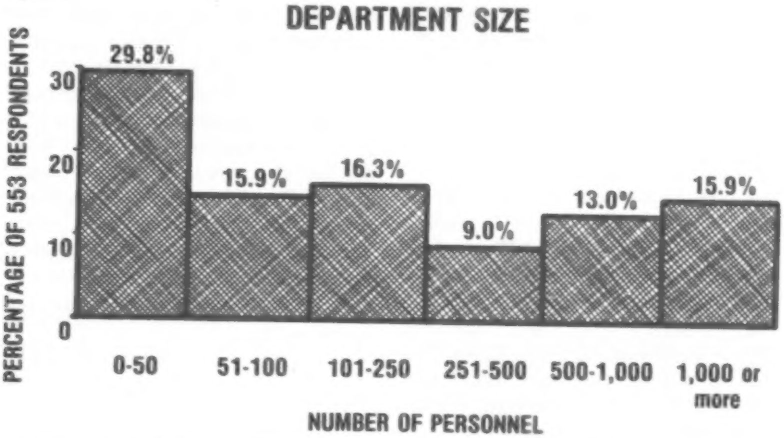
The results of a research study conducted by Special Agents Reginald R. Clay and Robert E. Yates of the FBI Academy indicated the scope of the problem of marginal police performers. The researchers set out to identify and profile the police marginal and unsatisfactory employee by using a questionnaire survey given to a nationwide sample of police supervisors and managers.[2]

The Clay-Yates study was completed in early 1981. One hundred and eighty-three randomly selected participants of the 117th Session of the FBI National Academy responded to an initial survey instrument. The instrument was modified for validation and then given to an additional 1,200 law enforcement supervisors. Five hundred and fifty-three of these were used to derive a significant sample of data for consideration.[3]

*Special Agent Robinette*

The study respondents were all supervisors of law enforcement personnel. Ninety-seven percent of the respondents had been police supervisors for over 2 years; 93 percent had been in police work for 7 or more years. The respondent group represented a variety of departments and agencies: 16 percent were from departments of 1,000 or more sworn personnel; 54 percent were from departments of intermediate size; and 30 percent were from small departments (50 or fewer sworn personnel). (See fig. 1.)

*Figure 1*



The researchers set out to identify employee problem areas by frequency of occurrence and severity of the problem. Those surveyed were given 16 choices of problem behavior and asked to select the most frequently occurring and the most serious. The responses indicated that the most frequent employee problem area is often viewed as the most serious; 38.5 percent cited the most frequently occurring problem was the police officer who did "just enough to get by." The data also indicated that the supervisors regarded this employee as their most serious problem. The second most frequently occurring problem was absenteeism and tardiness (19.9 percent) followed by resistance to change (11.2 percent). (See figs. 2 & 3.)

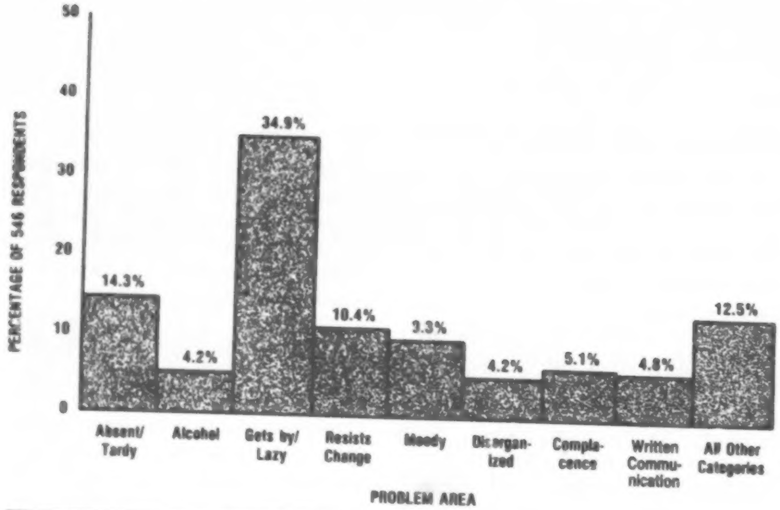
**Police Problem Employee Profile**

An examination of the Clay-Yates data produces a profile of the police problem employee in the United States today. The problem employee is a male officer assigned to patrol or investigation who has some college education and is between 25 and 39 years of age. As stated before, the most frequent and most serious difficulty is that he does only enough work to get by. The study shows that the largest single group of these employees (28 percent) were 30 to 34 years of age and had 6 to 10 years' service with the department. (See figs. 4 & 5.)

Implied in the study is a definition of problem employees. The marginal performer is one who has demonstrated the ability and willingess to perform well, but who is actually doing only "enough to get by on the job." [4] The

*Figure 2*

**MOST SERIOUS EMPLOYEE PROBLEM AREA**



unsatisfactory employee is one whose level of performance is consistently below that established as acceptable by the law enforcement organization.

In addition, the Clay-Yates study asked police supervisors who were managing problem employees to identify the causes of the problems. Although complex by nature, these causes of poor performance can be broadly assigned as follows: (a) External influences, i.e., factors away from the job environment, (b) the personal and unique weaknesses of the individual, (c) departmental mismanagement, i.e., organizational forces other than the immediate supervisor, and finally, (d) the immediate supervisor. Of the Clay-Yates study respondents, 39.9 percent laid the blame of poor performance on the individual employee; 26.9 percent located the cause in outside influences; 26.6 percent accused departmental mismanagement; only 6.6 percent fixed responsibility on the immediate supervisor. (See fig. 6.) In 60 percent of the cases, the duration of marginal performance had extended over a year.[5]

A clear understanding of marginal performance necessitates a closer examination of some of these causes.

### External Factors

Today's young police employee grew up in the 1950's and 1960's when a personalistic philosophy began to permeate American society and the national mood focused on material abundance, GNP growth, and technological advancement. American workers began to change the kind of jobs they performed. In the 1950's, 65 percent of the work force was engaged in industrial occupations and only about 17 percent was employed in information (personal service) occupations. In the following 30 years, the number of Americans in industry dropped to 27 percent while the ranks of the "white-collar" information worker rose to 58 percent in 1980.[6]

During the 1970's, a "self-fulfillment" movement started to spread throughout the United States. By the late 1970's, national surveys showed more than 7 out of 10 Americans (72 percent) spent a great deal of time thinking about themselves and their inner lives.[7] Traditional values were completely reversed, and the self-denial ethic which once fueled the faltering engines of industry was lost in the search for self-fulfillment.

The rising expectations of an expanding middle class and the higher educational levels of those entering the work force combined to produce a perception of needed self-fulfillment. Police departments were not excepted. During this time, the U.S. President's

*Figure 3*

**MOST FREQUENT PROBLEM AREA**

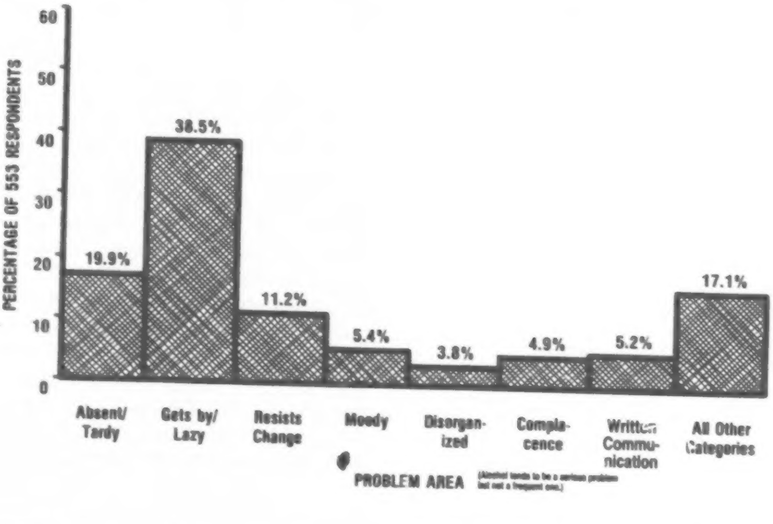
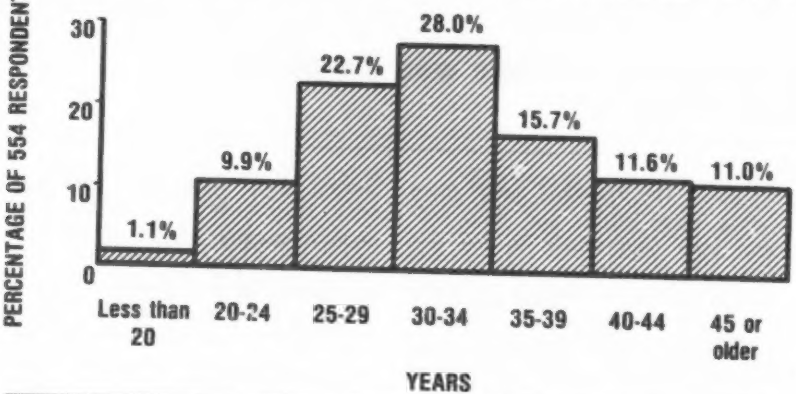


Figure 4

AGE OF EMPLOYEES WITH MOST SERIOUS PROBLEM AREA



Commission on Law Enforcement and Administration of Justice called for the professionalization of police. The U.S. Congress voted large Federal appropriations to increase police officer education and management training.[8] With subsequent liberal LEAA educational funds, law enforcement and criminal justice programs proliferated in newly created junior colleges and technical schools, as well as on traditional campuses. Previously, such programs were not available to the police aspirant. Education raises personal expectations. Those entering the police profession during the 1960's and 1970's brought expectations of advancement and personal income growth which traditional police departments can scarcely meet. Such a reality is bound to cause individual frustration and other discontent manifested in "burn out" and other forms of counterproductive behavior.

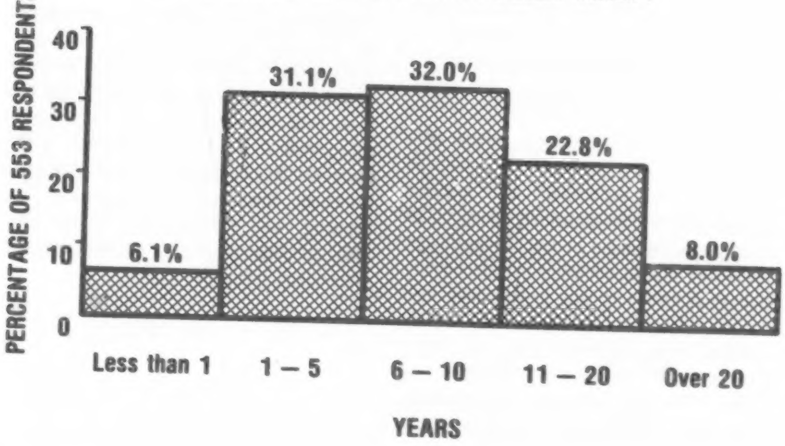
The police "problem employee" of the 1980's comes from that social, economic, and psychological turmoil. The pervading cultural psychology of affluence has reversed the self-denial ethic; the tradition of police service to the community is, in some instances, also reversed. Those who entered police service seeking affluence and self-fulfillment become bored with routines and cynical toward the public after the excitement of mastering police skills is gone.

Traditional police organization structures leave very little room at the top for large numbers of educated recruits. In 1977, 42 percent of the officers of departments surveyed by the Police Executive Research Forum had associate or higher degrees.[9]

The officers came to police work with expectations of promotion, pay increases, and enlarging job responsibilities. Not all of the expectations can be met. Frustration occurs, enthusiasm for the job diminishes, and behavior changes, often for the worse. Moreover, many of the young recruits joining departments today bring with them a psychology of affluence which moves them to seek increasing salary levels. This attitude flies in the harsh face of economics. Cost-push inflation and antitax movements, such as Proposition 13 in California and Proposition 2.5 in Massachusetts, combine to strain public revenue. Cutback Federal and State budget management requires police to share smaller and smaller portions of public revenues. Budget cuts affect salary levels. Consequently, there is less to go around at a time when individual expectations of affluence are rising. Such countervailing forces are another source of frustration for the individual officer.

Figure 5

TENURE OF EMPLOYEES
WITH MOST SERIOUS PROBLEM AREA



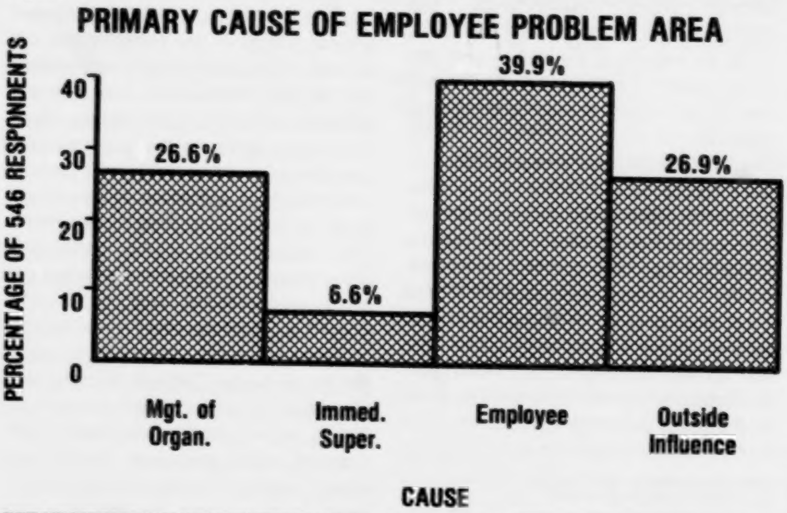
### Time-Psych Zones and the Expectation Curve

Coupled with social change are the individual, physical, and mental developments of each person's life. These circumstances of personal change can be described as "time-psych zones." Daniel L. Levinson published the results of a study of basic importance in his book, *The Seasons of a Man's Life.*[10] It is the first such study which explains adult development according to an age-linked time-

> **". . . the most frequently occurring problem was the police officer who did 'just enough to get by.'"**

table. He relates each stage of development to a man's job as the primary base for his life in society. The findings indicate that as we grow older, motivation patterns change. Personal, physical, and environmental circumstances change. Needs change; therefore, behavior changes.

*Figure 6*



Time-psych zones are the zones of personal expectations which change with age. In early adulthood, during one's first major job responsibility, achievement expectations run strong and high. These are modified by experience and reality during the midlife transition and become settled only through the turbulence of the transition. Often, this transition is marked by confusion of needs and desires. The desire to acquire additional possessions, to taste life in the fast lane, to travel to new places, and to meet new and important people engaged in exciting activities are all seen as needs. Personal goals are shaped by the marketing media which also raises these expectations in order to increase product sales. The individual needs more money, more leisure, and more freedom from commitment to job and home. As Yankelovich claims, ". . . desires are infinite. Anyone trapped in the fallacy that the self is a failure to the extent that all one's desires are not satisfied has set herself or himself up for frustration."[11] Stability is regained during the middle-adult era and carries over through a less turbulent transition into late adulthood. The significance and effect of the stages and transition on a police officer's career and worklife are important.

The early stages of a police officer's career are usually characterized by high expectations of service achievement. He often daydreams of exciting successes in his assignment. He views the successes as necessary coin with which to buy preferment and career-enhancing assignments of increased responsibility. Persons riding the expectation curve in their 20's and early 30's are adaptive to change. They view change as challenging, presenting new opportunities for achievement. They have a high tolerance for negative hygiene factors in the work environment and conditions.[12] They are future-oriented, seldom reflective, and have a high readiness for training. They have a low tolerance for perceived opportunity restriction. Often, they equate self-fulfillment with career advancement and will consider any real or imagined attempt to restrict their advancement with animosity and resistance.

As officers peak on the expectation curve (usually during or just after Levinson's midlife transition), they adjust their expectations. Motivation patterns and other job performance characteristics change. Those on this flat downside of the expectation curve are resistant to change. They often view a change in tactics, procedures, or policy as a threat to their new-found stability and will actively resist change, or worse, try to subvert it. The old saying about "not being able to teach an old dog new tricks" applies some folk wisdom to the reality. These officers also have a low tolerance for hygiene negatives and can take personal offense at minor adjustments in their work environments. They respond negatively to any deterioration in perks or seniority and working conditions. They are present-oriented and think of success in terms of completing today's task and not in terms of tomorrow's assignment. They have a high tolerance for stable policies, rules, and procedures and a low readiness for training, new job-learning experiences, and additional career-related formal education. (See fig. 7.)

The results of the Clay-Yates study support this expectation curve phenomenon. The large majority of marginal police performers fall in this age group. As reflected in the data, the average marginal performer has between 8 and 16 years' police service.

### Change Comes to the Police Department

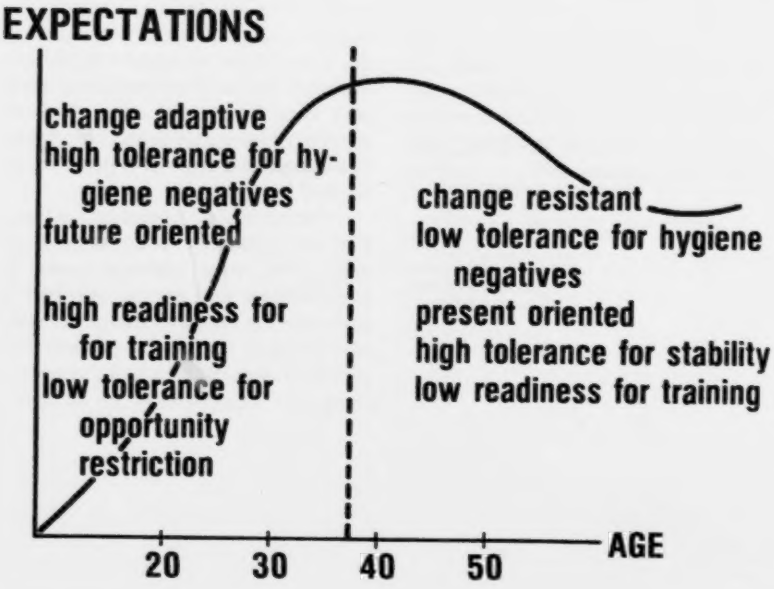
Changes in the social environment, values, demographics, technology, and economy have all combined to create a managerial atmosphere of turbulence. Once the most stable of municipal organizations, police departments now struggle through strikes, reorganizations, new public policy, and vastly increased operating costs. Between 1967 and 1977, the per capita cost of policing in a large city had risen from $27.31 to over $91, an increase of over 257 percent.[13]

Police work is labor-intensive. The human resources are the most effective of the resources applied in policing and also the most costly. Any cost-reduction analysis or efficiency-improvement effort must focus on improving human resource management. The intuitive perception of this reality has generated concerned interest in the management and salvage of the marginal performer.

The marginal or unsatisfactory performer is costly to police organizations. The difficult work of solving the problem of the marginal employee is discomforting to police managers. Some say it is impossible to take effective action because of legal restraints or union policies. Others cite lack of training in managerial skills for shift supervisors and first-line commanders. All are uncomfortable when confronted with the problem employee. Uncomfortable or not, however, police managers must seek solutions.

*Figure 7*

**The Expectation Curve**



### The Management Challenge

If these data and the trends they suggest are accurately understood, they raise new challenges for police managers. The first is to analyze carefully the factors which contribute to marginal police performance; the second is to find ways to keep the job alive for those who once did it well and with enthusiasm but who have now lost their motivation. Finally, police managers must develop and use effective coaching and documentation skills.

The first challenge, which is analytical in nature, is the most difficult. The police manager is action-oriented. He thrives in an atmosphere of activity. He has little time, inclination, or training for thoughtful reflection. George Odiorne identifies this predisposition as an "activity trap." He writes:

> "The activity trap is a self-feeding mechanism if you do not turn it around. Everybody becomes attached to some irrelevancy and does his or her job too well. Its ultimate stage is when the [chief] himself loses sight of why the [department] exists, and demands more and more activity rather than results. . . .
>
> "Meanwhile, all this activity eats up resources, money, space, budgets, savings, and human energy like a mammoth tape worm.
>
> "While it is apparent that the activity trap . . . fails to achieve missions, it has an equally dangerous side-effect on people; they *shrink* personally and professionally."[14]

**"Success can be obtained by a recommitment to excellence by the police manager, by a sensitive and attentive concern for the officers under his leadership, and by the acquisition and development of managerial skills."**

Without constant attention to the results and contributions that a police manager expects of his subordinates, the manager falls into the activity trap. Some of his subordinates will shrink into the rote process of a job and lose sight of its goals and objectives. With the sure knowledge that activity without goals is wasteful, it is no surprise that these officers become bored or dissatisfied.

As Odiorne points out, however, the trap is not inevitable. It can be resisted and circumvented by enlightened and analytical leadership. The challenge of supervisory analysis calls for the police manager to focus on results in directing his subordinates, then clarify and communicate the results to the people doing the work. Only then will the work itself produce the satisfaction and enthusiasm that keeps the police employee productive. This is not an easy task, but it is specifically managerial and executive in nature. Where the symptoms of marginal performance are unenthusiastic and dissatisfied officers, the manager would do well to find out whether looking busy has become safer than being productive.

The next challenge is finding ways to energize employees. With clear goals and objectives identified, how does the police manager secure employee commitment and enthusiasm for task accomplishment?

The answer here lies in the manager's own commitment and enthusiasm. He must avoid the danger of transparent management, which is the depersonalized processing of organizational directives. If he becomes an executive rubber stamp, he will be viewed as an empty suit, not an effective police manager.

The third challenge is that of developing one's own perception, understanding, and communication skills. To meet this challenge, the police manager must examine his own assumptions about the marginal performer. He must test those assumptions against his wider and probably more objective nonorganizational experiences. He must learn to be sensitive to the expectations of his subordinates. He must also keep in touch with his own time-psych zones. More attention is now directed at officers and employees who are not meeting standards.

Daniel J. Bell, writing in *The Police Chief,* verbalizes the interest when he says: ". . . there needs to be a concentration of effort to move the 'drone' type police officer into other careers outside the police profession." [15] Who is the "drone-type police officer" Bell refers to? Can causes of poor performance be identified and how can they be remedied?

A decision for dismissal or a decision for salvage with the required coaching and counseling must be made. Salvage and renewal are practical, cost-effective ways to meet the challenge. Six out of 10 police managers (65.2 percent) of those surveyed recommend that the marginal police employee be salvaged.[16]

Dismissal is difficult and impossible without documentation. Changes in the legal environment, especially those brought on by affirmative action, equal employment opportunity, and the women's movement require job analyses and validated performance standards. Job analysis and validation were activities that were formerly not required of the police. Standards are determined and stated. Formal defense of standards and associated personnel actions are now required, if not in a court of law then in an appeals commission or grievance board.

Strangely, the procedures to support either a dismissal or salvage decision are similar. Effective coaching *and* a permanent, legal termination begin with documentation. The manager must begin with a clear concept of the unit's goals and objectives. These must be communicated to the employee clearly. The work the employee is expected to do must relate directly to the goals and objectives and be so explained to the employee. The manager is required to plan carefully the marginal subordinate's work, just as the subordinate is required to perform the work. Some measurement of progress must be agreed upon. Performance must be documented on a timely basis; appraisal must be regular, realistic, and frequent.

Performance appraisal is just that—an evaluation of actual performance. The police manager needs to pay personal and honest attention to the work the marginal performer does and the work he fails to do. Only then can both understand when the work is done and the objectives are achieved.

The manager has the opportunity to reinforce behavior in a nondestructive and objective way. The manager's feedback is the employee's guide to improving performance.

Significantly, almost half of the supervisors polled in the Clay-Yates study (44.5 percent) claimed success in dealing with their problem employees. The probability of success is good, but success is the result of difficult managerial work.

In these times of shrinking resources, police managers are looking for ways to do more with less—ways to meet the rising public demand to reduce violent crime, restore peace and tranquility, and spend fewer public dollars. There is no room for continued marginal performance in police work. Success can be obtained by a recommitment to excellence by the police manager, by a sensitive and attentive concern for the officers under his leadership, and by the acquisition and development of managerial skills. **FBI**

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**Footnotes**

[1] The term "cost-push inflation" is used to describe the inflationary spiral in which increasing costs act to push up prices and wages in a cyclical effect.

[2] *Problem Employee Survey: An Analysis of Employee Problem Areas in Law Enforcement,* Reginald R. Clay and Robert E. Yates, FBI Academy, Quantico, Va., 1981, p. 3.

[3] "Of the 1,200 law enforcement supervisors surveyed, questionnaire responses from 535 were selected. The screening factors for selecting questionnaires for gathering meaningful data were gleaned from the following questions: (1) Does the respondent currently supervise employees? and (2) Does he have a problem employee?" Clay-Yates, p. 23.

[4] Clay-Yates, p. 6.

[5] Clay-Yates, p. 67.

[6] John Naisbett, "The Bottom-Up Society: America Between Eras," *Public Opinion,* April–May 1981, p. 19.

[7] "In the nineteen-seventies, all national surveys showed an increase in preoccupation with self. By the late seventies, my firm's studies showed more than seven out of ten Americans [72%] spent a great deal of time thinking about themselves and their inner lives—this in a nation once notorious for its impatience with inwardness. The rage for self-fulfillment, our surveys indicated, had now spread to virtually the entire U.S. population." Daniel Yankelovich, *New Rules: Searching for Self-Fulfillment in a World Turned Upside Down* (New York: Random House, 1981), p. 5.

[8] *The Challenge of Crime in a Free Society,* A Report by the U.S. President's Commission on Law Enforcement and Administration of Justice, U.S. Government Printing Office, Washington, D.C., p. 109. The Commission recommends: The ultimate aim of all police departments should be that all personnel with general enforcement powers have baccalaureate degrees."

[9] Michael T. Farmer, ed., *Survey of Police Operational and Administrative Practices—1977* (Washington, D.C.: Police Executive Research Forum, 1978), p. 63.

[10] Daniel J. Levinson, *The Seasons of a Man's Life* (New York: Alfred A. Knopf, 1978).

[11] Yankelovich, p. 238.

[12] Frederick Herzberg says there are two elements which create employee motivation—the job itself and the hygiene factors. He describes hygiene factors as those things and circumstances incidental to work itself, such as salary, fringe benefits, working conditions supervision, policies, procedures, rules, and regulations. These can be viewed either as positive or negative and can cause dissatisfaction or satisfaction but cannot be viewed as motivators because true motivation, according to Herzberg, comes from the job itself, its scope, its value, and the sense of accomplishment it provides.

[13] U.S. President's Commission, 1967, p. 91; Farmer, p. 13.

[14] George S. Odiorne, *The Change Resisters* (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1981), p. 16.

[15] Daniel J. Bell, "The Police-Personnel Upgrading for Professionalism," *The Police Chief,* vol. XLV, No. 1, January 1978, p. 32.

[16] Clay-Yates, p. 65.

Physical Security

THENUMBERSGAME
MASSACHUSETTS STATE LOTTERY
DIRECTOR
STATE TREASURER
DRAWING DATE
Wednesday November 0 4 1981
WINNING NUMBER
9 4 4 5
2:42

By
ARTHUR C. WEINSTOCK, JR.
*Chief of Security*
*Massachusetts State Lottery*
*Braintree, Mass.*

# Security of a Multimillion Dollar Lottery

The Massachusetts lottery came into existence in September 1971, when the legislature established a five-member commission and set in motion the mechanics of what would develop into a $200 million-a-year business by 1981. In the 6 frenzied months following the passage of legislation, 120 employees were hired, 4,000 stores (called sales agents) were enlisted to sell tickets, 700 branch banks were organized to act as ticket distribution points and depositories, and 4 additional commission members were appointed to work with the State treasurer, who also served as chairman of the commission in accordance with the statute.[1]

Security at the Massachusetts State Lottery Commission is as much a part of the business as the smiles on the faces of the million-dollar winners. Following the appointment of chief of security by the commission, the first priority was to establish background investigation procedures for all potential lottery employees. Joining the staff at the outset were security officers with investigative experience in Federal, State, and local law enforcement agencies and a security guard force to provide the necessary physical security, thereby providing the basic elements for fraud prevention and protection of assets. All lottery security officers have statewide special police powers to make arrests for any criminal offense committed in connection with the operation of the lottery, under warrants issued by the Massachusetts Department of Public Safety.[2]

## Security Measures

Lottery headquarters is located in Braintree, Mass., a suburb 11 miles south of Boston. All accesses to the building are covered by closed-circuit television, with monitors mounted at the security desk in the front lobby. Additional hall and room cameras in high-security areas are monitored by members of the security guard force, which is on duty 24 hours a day, 7 days a week.

Employees and visitors must obtain identification badges at the security desk before proceeding to any part of the building. The rear and side doors are alarmed and wired to the main security desk. When in use, such as for delivery of tickets, the security desk is notified and the alarm shut down. After business hours, the alarms remain in force and only the front door provides access.

In higher risk areas, i.e., computer rooms, ticket distribution area, and rooms storing drawing equipment, security measures include closed-circuit television and electronic and sound alarms. Entrance to the computer and distribution rooms is provided by key card access boxes. Each employee assigned an access card is given an individual code designed to allow that

*Mr. Weinstock*

employee entrance only into areas in which he is authorized.

Although visitors obtain an identification tag at the security desk, they can proceed into the building only when accompanied by the employee with whom they have business. The visitor must also sign a register when entering and exiting the building.

**Ticket Security**

Security officials targeted the prevention of counterfeiting or alteration of the preprinted lottery tickets as one of the top priorities. Basic to the protection of the weekly game is the numerical sequencing of the tickets, which are printed inhouse on high-quality stock by high-speed printers. A control number system having 1 million possibilities assigns the numbers sequentially to each ticket, thereby preventing the possibility of repetitions. In order to sell more than a million tickets, the random numbering was repeated in multiple pools identified by letter. During the first sales period, 9 pools of 1 million tickets were offered to prospective winners. As a result of the first weekly drawing, seven persons won $50,000; the other two possibles were returned to the lottery unsold.

Ticket stock is purchased under bid procedures and stored at lottery headquarters. The stock is numbered sequentially in order to account for every blank ticket prior to the computer runs, since it is the six-digit number the player will use to match for prizes. To prevent tampering, a control number unique to each ticket must match the winning number on the computer file in order for the prize to be paid. In addition, the name of the store to which the ticket is assigned is also printed on the face, as is the drawing date. Weekly game tickets are printed 5 weeks in advance, then are held in a high-security area until the time for distribution.

Sales agents at the store level are allowed to pay prizes up to $25. Above that, the ticket must be returned to lottery headquarters for validation and processing. Each claimed prize is entered into the computer file by a keypunch operator and must match the weekly winning number for the drawing date and the control number. Prior to the weekly drawing, unsold tickets are returned to headquarters where the playing numbers and control numbers are entered into the computer file, voiding them for contention in that week's drawing.

The lottery was in operation only 2 months when there was an opportunity to test the security of the numerical codes. Following a weekly drawing, a young man brought a ticket with the winning number to the claim center to collect the $50,000 prize. A photographer, who was in the center at the time, took a picture of the ostensible winner and delivered it to newspapers and wire services that published the story and picture throughout the State.

When the claim form and attached ticket reached lottery headquarters later that day for routine processing, it was immediately apparent that the ticket had been altered. The serial numbers originally assigned to the ticket were not those of a winning combination.

Security personnel contacted the claimant, who boldly told them he would pursue the prize money. The proper paperwork was assembled, and a warrant was sought for the young man's arrest on charges of uttering an

Security guard mans the desk with alarm controls and closed circuit television monitors.

altered lottery ticket, a felony under the statute.[3] He was arrested, tried on the charge, and found guilty following testimony by lottery security and computer personnel. Since then, there have been few prosecutions for ticket forgery.

Security surrounding the *drawing* of the weekly winning number is as rigid as that governing the printing process. Total integrity of the drawing process is necessary to demonstrate to the buying public that each ticket has the chance of being a winner.

"Untouched by human hands" was an advertising slogan used to promote a product now long forgotten, but it still applies to the device used by the Massachusetts lottery to draw the winning numbers. At the heart of the system are 13 numbered, balanced lucite wheels, each containing digits from 0 through 9 in a unique random sequence. Within each of the wheels is a small red rubber ball, similar to a child's toy. The perimeters of the wheels are louvered and inside, between each digit, are small lucite triangles to separate the numbers. Each wheel is enclosed in a clear plastic box. Six of these boxes are mounted on the Big Money Game board, in an order determined by a computer program. At the appropriate time, the only element needed to activate the wheels for number selection is compressed air.

Every Wednesday evening at 7:30 p.m., the weekly winning number is drawn live on a half-hour television show broadcast from a major Boston studio. The weekly drawing is part of the Big Money Game Show on which contestants have the opportunity to compete for the biggest prizes that the lottery offers—$100,000 (paid $10,000 a year for 10 years) and the million-dollar prize.

When the program reaches the point at which the weekly number is to be drawn, the cohost of the show simply opens a valve attached to a compressed air tank holding the air at 130 pounds per square inch. The air, forced through six small nozzles beneath the wheels, blows against the louvered rims, which causes the wheels to spin in a blur. The air is released for approximately 5 to 6 seconds, and the wheels spin on their own axles for about 45 to 50 seconds. Inertia and the weight of the rubber ball slow each wheel until the ball finally comes to rest in 1 of the 10 possible digits in each wheel. Even if a lead ball were inserted, the wheel would still spin, and while it would make fewer rotations, the spot at which it would stop could not be predicted.

Wheels are tested periodically for bias by spinning each 100 times and noting the position each time the ball stops. Once a month an independent testing laboratory checks each axle for balance. When the wheels are not in use, they are stored in a locked room under 24-hour audio and visual surveillance. They are removed 2 hours before the Wednesday evening show and transported to the television studio by a member of the security department. At the conclusion of the television show, they are returned to the locked facility at lottery headquarters.

A similar set of wheels and procedures are used to determine the nightly winning number in the lottery's Daily Numbers Game. Four digits are selected each night at 10:30 p.m. at lottery headquarters in a drawing open to the public and subject to the same security provisions as the weekly drawing.

### Instant Game Lottery

Very different problems were encountered when the Massachusetts lottery decided to introduce the first Instant Game in the country.

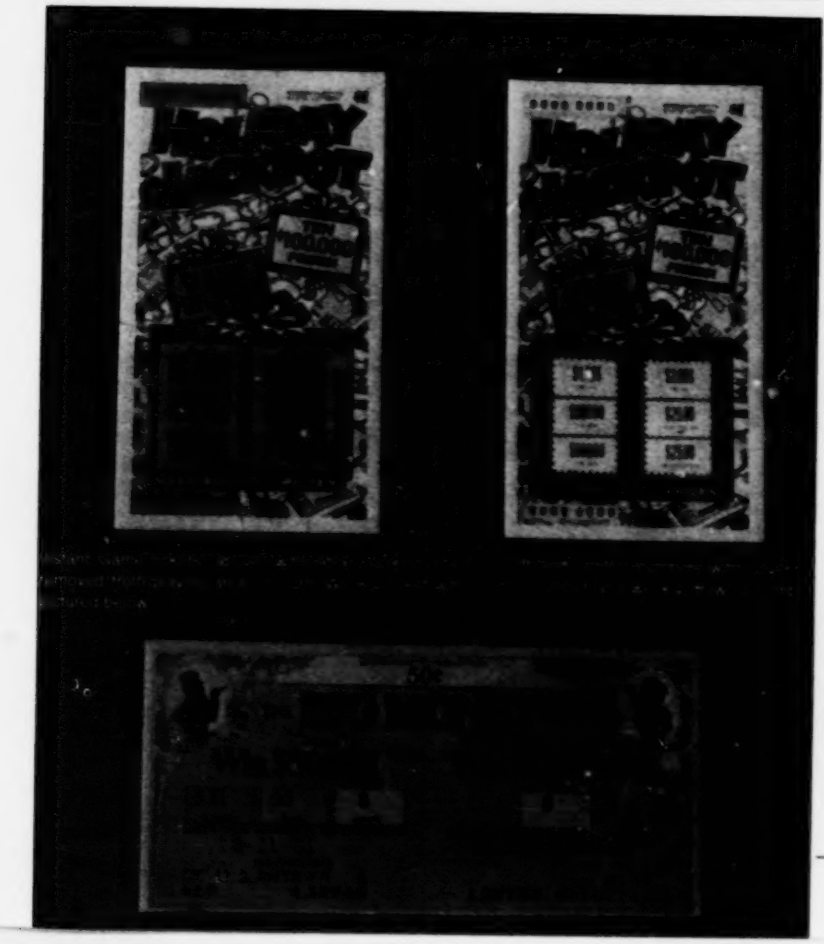
In 1974, after months of study, the Massachusetts lottery, in conjunction with a private firm, developed a concept which would take all lotteries in a new direction. The idea was to sell a game in which all tickets would be a self-contained lottery, i.e., a player would know whether the ticket was a winner simply by matching numbers or symbols on the card. This presented obvious difficulties in preventing alterations of tickets.

The initial stumbling block was overcome by the development of a latex coating to cover the numbers a player would use to determine a win-

## “Security at the Massachusetts State Lottery Commission is as much a part of the business as the smiles on the faces of the million-dollar winners.”

ner. The coating devised could not be candled, and handlers and retailers would not be able to discern if a given ticket was a winner. If the coating was disrupted before sale, the ticket was ruled ineligible for purchase. A second vital security measure was taken by printing a unique code number on each ticket. This, too, was covered with the latex coating, but marked with the warning “Void If Removed.” That number was the key in the computer file to the playing numbers on the face of the ticket. One copy of the master file was retained by the printer and a second copy was kept by the lottery's validation department.

Lottery personnel oversaw the printing of tickets at the plant, and the finished products, packaged in booklets of 300 tickets each, were shuffled in a random fashion for distribution. When the packets reached lottery headquarters, a further random sequence was assigned to the delivery system by a second block of lottery employees, who were not privy to the printing pattern. The distribution guaranteed that no employee of the printing company or the lottery would be in a position to pinpoint where any of the high-level winners might be purchased. The top-level instant prize was $10,000. Remaining major prizes, up to the first prize of $1,000 a week for the rest of the winner's life, were distributed through a drawing at the conclusion of the game. As a matter of record, that prize was won by a 24-year-old South Boston woman in 1974, who told lottery officials that she planned on living a good long life.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As a step to check possible alterations, it was required that all tickets worth more than $10 would be submitted to the lottery for validation. They were subjected to visual scrutiny and matched against the VIRN (Void If Removed Number) to establish that the ticket was indeed a winner on the master file.

The Instant Game printing, distribution, and monitoring system worked so smoothly that in the ensuing years, the final drawings were eliminated. In the past 2 years, all prizes are contained on the tickets, including 10 top prizes of $100,000 each.

### The Daily Numbers Game

Bringing the lottery into the most competitive aspect of legalized gambling, the Daily Numbers Game required as much preparation as the previous games. The lottery began with the premise that the illegal numbers purveyor in Massachusetts paid $600 for a $1 bet on a three-digit exact win and between $3,000 to $4,000 for a four-digit exact win. To make the program attractive to bettors, a winning payout system was devised that would keep the average payoff higher than the illegals. A parimutuel payoff was developed based on 60 percent of the income for a given night. Calculating that the most attractive wagers were three exact and any order, or boxed in the parlance of the streets, and four exact, it was determined that an average of $5,000 would be paid to winners

> **". . . efforts made to guarantee the integrity of the products over the years has paid off in public confidence and an increasingly successful operation."**

of a four-digit exact bet and an average of $700 for a three-digit exact winner. A player of the lottery's Numbers Game would end up with more money in his pocket, after paying the taxes, then he would playing with an illegal operator, where custom demands that the runner be paid a 10-percent bonus on wins.

Prevention of fraud was again a main objective in setting up the Numbers Game in 1976. The commission determined that a system which could be implemented statewide would have the most appeal at the outset, and a network of machinery and personnel was set up to take the daily bets. Betting slips were designed to come with three copies, one for the customer, one for the store, and one for the lottery. Validation machines were purchased to stamp the slip with the name of the store, the date, and a sequential code number identifying the machine and providing a chronology of the day's business.

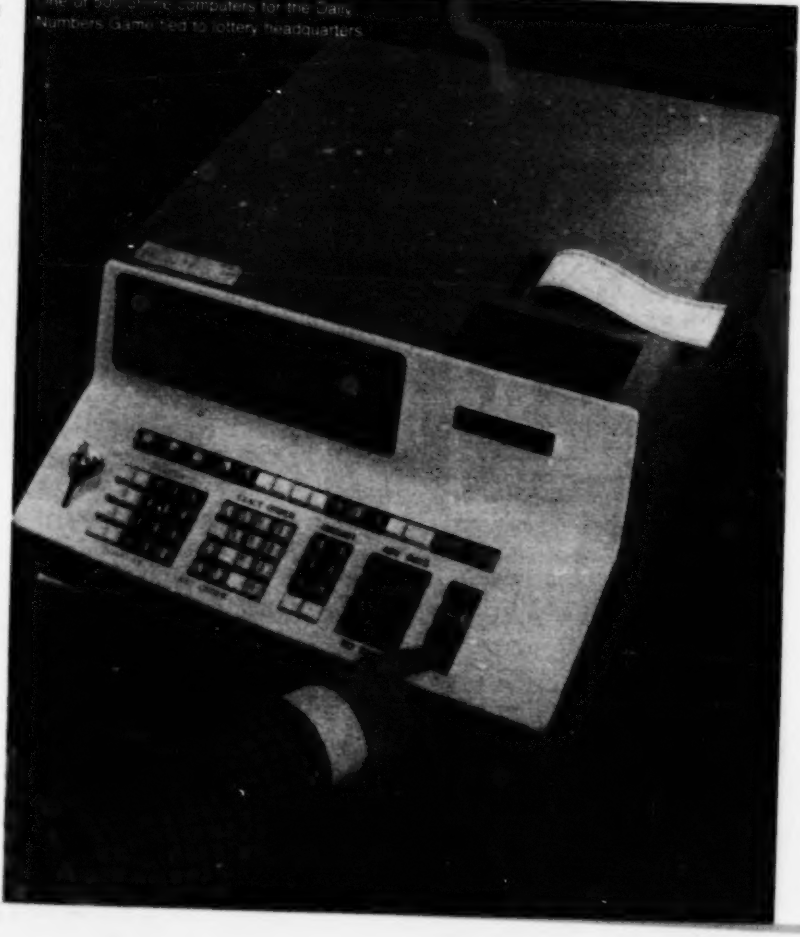
The machines were relatively simple devices, yet contained several security elements which prevented tampering. Among these is a special ink used for the numbering stamp and a unique bar code within the 12-digit code itself.

To prevent past-posting, a lottery employee who picked-up the slips each day would open the validating machine and advance the date with a small pencil-line instrument. A slip would be run through the machine by the lottery courier, indicating that all the betting for the day was concluded, and any business taken after that point would apply to the next day's business. The employee arranged the slips in sequence. From the so-called "end slip" of the prior day to the current one, the only slips the lottery would honor for that night's drawing were represented by the lottery copies from that given store.

When the slips from more than 1,800 stores arrived at lottery headquarters in the evening, they were placed on microfilm which was stored in a safe. No bet would be honored unless the lottery copy appeared on the microfilm. After the microfilm was stored, all slips would be read by high-speed optical scanners. All pertinent information was picked off the slips and stored on computer tape. Bet types, total dollar value, the number of days played, and the bettor's number were recorded.

Once all the slips had been read and the information stored, the winning number would be drawn in the manner detailed previously. The winning number would be fed into the computer and a simple long division would determine that among the players holding winning tickets, 60 percent of the income would be divided.

The lottery system was challenged early in the Numbers Game by attempts to frustrate the security of the system. One method involved collusion between a customer and a store clerk. The clerk would run a blank slip through the validating machine and imprint on it the date and name of the store, as well as a sequence number



One of 500 on-line computers for the Daily Numbers Game tied to lottery headquarters.

which would appear to be well within the range of the day's business. The perpetrators would then hold the lottery copy out of the day's collection, and following the winning number selection, would fill in the three copies with the winning number and a large $5 or $10 bet. The bettor's copy would be presented to the lottery for payment, but under the validation process, the claim would not hold up. Neither the original nor the microfilm copy would appear. Some claimants pushed the matter to court, and in every case, the lottery system was upheld by the judiciary.

In some flagrant cases, lottery security officers noted repeated attempts to perpetrate this fraud, and several successful prosecutions resulted. However, there has been a continued, albeit decreasing, incidence of attempts to alter the number selection after the daily drawing.

Another phase of security responsibility is to control the possibility that a sales agent may decide to withhold "number" bets from the State lottery, pocket the money, and become the bookmaker. A review of the computer printout of a suspected sales agent may reveal skips in the sequential numbers of the lottery copies of the three-part numbers coupon which are validated on that agent's machine. Several investigative techniques may be employed to determine whether the skips are machine connected or attempts to become a partner, thereby defrauding the taxpayers of Massachusetts, the beneficiaries of the lottery profits. A weekly printout discloses the identity of every agent who had any missing slips on any day of the prior week. A standard service call will determine if the machine has malfunctioned. Replacement of the tape in the machine used to print the sequential number of the missing slip was in fact struck, thereby warranting further investigation. Of course, when a customer arrives at lottery headquarters with a validated bettor's copy of a winning number coupon to file a claim and it is determined that the sales agent did not submit the official lottery copy, it becomes more apparent that a partner of the lottery may exist. Depending on the probability and weight of evidence, possible sanctions include suspension and revocation of the sales agent's license to sell lottery products[4] or criminal prosecution by other law enforcement agencies for violation of antigambling State law.[5]

In 1981, the lottery purchased 500 online computer terminals for use in the major retail outlets in the State. These machines have absorbed nearly two-thirds of the Numbers Game business and eliminate the courier/slip system to a large extent.

The major benefit of the online system is that each terminal is integrated by a direct line with the central computers at lottery headquarters. Within this system, security is built into the programs which control the daily operations. Each machine is activated by a key start, and the store owner is alerted at the time the machine is installed to treat the terminal with the same precautions he would his cash register.

Once the machine is turned on, a unique agent's code must be entered on the keyboard to begin the day's activity. A bettor may then make a transaction by filling out a betting card or by verbally telling the clerk his bet—number, type of bet, length of play, and amount. The clerk then simply keys the information on the terminal.

The unique coding device prevents any unauthorized use of the terminal and does not allow any interaction with another terminal. The store owner may key in a special program at any time during the business day, and the terminal tape will provide up to the second information on the number of wagers made and the total dollar value. It is simple then for the owner to match that information against his receipts to prevent instore fraud.

Each terminal is monitored at lottery headquarters, and repairmen are dispatched immediately in the event of malfunction.

At present there are nearly 500 terminals in operation throughout the State, and plans call for 1,000 when the program is fully implemented. With the Daily Numbers Game almost completely automated and the weekly Big Money Game tickets sold from the terminals under a new program, some of the burden of external security will be shifted to internal security—established procedures which monitor the computer personnel and programs.

In all, we are confident that the efforts made to guarantee the integrity of the products over the years has paid off in public confidence and an increasingly successful operation. Security has been the hallmark of this business which has grown from $56 million in 1972 to $250 million in 1981. **FBI**

**Footnotes**

[1] Mass. Gen. Laws. ch. 10, § 23.
[2] Mass. Gen. Laws. ch. 147, § 10K.
[3] Mass. Gen. Laws. ch. 10, § 30.
[4] Mass. Lottery Commission Rules and Regulations 961 CMS § 2.13(7).
[5] Mass. Gen. Law. ch. 27.

# THE INVENTORY SEARCH
## (Conclusion)

By
JOHN C. HALL
*Special Agent*
*FBI Academy*
*Legal Counsel Division*
*Federal Bureau of Investigation*
*Quantico, Va.*

*Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.*

Part I of this article discussed the development of the law pertaining to automobile inventory searches, with particular emphasis on the landmark decision of the U.S. Supreme Court in *South Dakota* v. *Opperman*[58] and the subsequent implementation of that decision by the lower courts. Part II discusses the scope of an inventory search and its application to other types of personal property.

### THE SCOPE OF AN AUTOMOBILE INVENTORY

As noted in part I, the Supreme Court in the *Opperman* decision suggests three important factors which can affect the determination of whether an inventory is a reasonable intrusion under the fourth amendment to the U.S. Constitution:

1) The lawful custody of the vehicle by police;
2) The caretaking (noninvestigative) purposes of the inventory; and
3) The diminished expectation of privacy one has with respect to an automobile.

Not only have these three factors been relied upon heavily by the lower courts to determine the authority of law enforcement officers to conduct inventories, but the latter two have significantly affected a determination by the courts of the *lawful scope* of an inventory once initiated.

### Caretaking Responsibility Vital vs. Expectation of Privacy

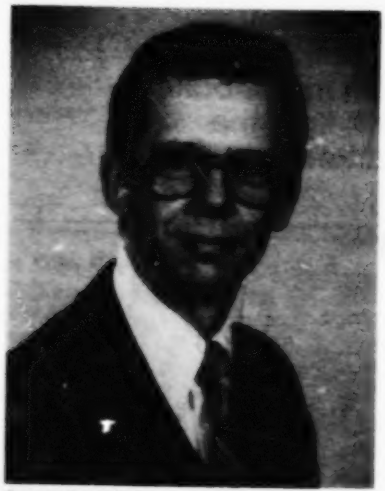
When law enforcement officers conduct a search under the authority of a valid search warrant, the scope of the search is spelled out in the warrant itself which, under the terms of the fourth amendment, must particularly describe the "place to be searched and the persons or things to be seized." Officers conducting a search without a warrant not only bear the burden of justifying the warrantless intrusion, but the intrusion itself—in order to be reasonable—must be limited in scope to the specific purposes for which it was conducted.[59]

In *South Dakota* v. *Opperman*, the Supreme Court observed that standardized procedures followed by the police tended to "ensure that the intrusion would be *limited in scope* to the extent necessary to carry out the caretaking function."[60] (emphasis added)

Courts have interpreted this language to mean that an inventory may only intrude to the extent necessary to meet whatever obligation the police may have to safeguard property in their custody. Although the courts are virtually unanimous in concluding that police have some responsibility to safeguard property which is within their lawful possession, there is some variance as to the nature and extent of the responsibility. Some courts have taken a narrow view with respect to the police responsibility and have defined the scope of the inventory accordingly.

*Mozzetti* v. *Superior Court of Sacramento County*[61] is representative of this category of cases. Police stored and inventoried the contents of an automobile following an accident in which the operator was hospitalized. The inventory uncovered marihuana in a small suitcase in the back seat of the car. In ruling that the inventory was unreasonable in scope, the California Supreme Court characterized the role of the police under State law as an "involuntary bailee" with only a "slight" duty of care. The court said:

> "In no case is an inventory of items not within plain sight essential to safeguard the contents or to fulfill a 'slight' duty of care."[62]



*Special Agent Hall*

The court concluded that such a duty as exists under the circumstances is satisfied by rolling up the windows and locking the doors of the vehicle.[63]

The majority of courts view the police responsibility more broadly and consequently allow greater latitude in conducting the inventory. In *United States* v. *Markland*,[64] the U.S. Court of Appeals for the Second Circuit rejected the defendant's argument that a police search of a container lying on the ground near an accident scene was illegal because the government had no real interest in the loss of defendant's personal property. The defendant suggested that the officer could either put the package in his automobile, completely ignorant of its contents, or he could drive away and leave it. The appellate court responded:

> "This argument demonstrates a curious unawareness of a police officer's role in society. Police have a duty to protect both the lives and the property of citizens . . . . A law abiding citizen . . . hospitalized following an accident and concerned about the security of his effects, may reasonably expect that the police will perform what the Supreme Court described as their 'community caretaking functions' . . . . We need not decide whether the police could be held liable to the hospitalized citizen for a failure to perform these functions . . . . *They surely would be derelict in their duty to the public.*"[65] (emphasis added)

In *United States* v. *Martin*,[66] the U.S. Court of Appeals for the 10th Circuit was confronted with a defense argument that an inventory of a car trunk was not justified because under Oklahoma State law a police officer is "gratuitous bailee" of defendant's property and therefore liable only if gross negligence is established. The court rejected the argument, upheld the inventory, and stated: ". . . we are confident that disposition of the present case does not turn on the law of bailment."[67]

As a general rule, once a court has determined the parameters of the police caretaking responsibility, the measures necessary to meet that responsibility are balanced against the degree of privacy expectation one has in the property to be inventoried. The result of such a balancing test is greatly affected by the circumstances of a particular case. The ensuing cases will serve to illustrate how these determinations are made with respect to the lawful scope of an automobile inventory search.

### Vehicle Interior and Glove Compartment

In *South Dakota* v. *Opperman*, the police officers who ordered Opperman's automobile towed were able to observe items of personal property in plain view through the window of the vehicle. They unlocked the doors of the car and inventoried the items thus observed, as well as a bag of marihuana found in the unlocked glove compartment.

In sustaining the inventory of the vehicle's *interior*, the Supreme Court noted, with approval, other lower court cases which "recognized that standard inventories often include an examination of the glove compartment, since it is a customary place for documents of ownership and registration . . . as well as a place for the temporary storage of valuables."[68]

**". . . courts which allow a fairly broad inventory of an automobile interior to extend to the glove compartment may still limit the intrusion to those areas where valuables would customarily be stored."**

The majority of the lower courts have followed the view of the Supreme Court in *Opperman* and concluded that given the justifications to conduct the inventory, the police may inventory the contents of the vehicle's interior, including the glove compartment.[69]

Because in the *Opperman* case the glove compartment in which the marihuana was found was unlocked, the question has been raised as to whether the result would have been the same had that not been the case. In *United States* v. *Barnes*,[70] Federal Drug Enforcement agents seized an automobile which was subject to forfeiture and removed it to a garage where its contents were later inventoried. Inside the locked glove compartment were found two guns and various capsules containing contraband narcotics. The defendant sought to have the evidence suppressed as fruits of an unlawful search, contending that the *locked* glove compartment in his automobile was distinguishable from the *unlocked* glove compartment in *Opperman*.

Noting that in *Opperman* the automobile itself was locked, the U.S. Court of Appeals for the Second Circuit rejected the defendant's argument and stated:

> "Where there is a duty to 'inventory,' there should be a concomitant privilege to use reasonable means to gain access for this purpose." [71]

State courts have generally followed as the same approach. In *People* v. *Godwin*,[72] police officers inventorying the defendant's automobile *unlocked* the glove compartment and discovered a bag of heroin. Defendant's motion to suppress the evidence as the fruit of an illegal search was denied, and he was convicted of possession of heroin with intent to deliver. The Michigan Court of Appeals upheld the search and conviction. Citing *Opperman*, the court noted that "the scope of an inventory search does extend to the glove compartment of a vehicle since it is frequently a repository for important documents and other valuables deserving police protection."[73]

It should be emphasized that courts which allow a fairly broad inventory of an automobile interior may still limit the intrusion to those areas where valuables would customarily be stored. In *People* v. *Thomas*,[74] police found a revolver in the air vent of an automobile whose operator had been arrested. The Michigan Court of Appeals held that it was reasonable to inventory the vehicle and that such an inventory could extend into the glove compartment of the car. However, looking into an air vent went beyond the permissible scope. The court stated:

> "Air vents, unlike glove compartments, or trunks, are not customary places for the storage of valuables. Nor are they areas within plain view." [75]

A minority of the courts take a more restrictive view of the proper scope of an inventory of a vehicle's interior. Ironically, the *Opperman* case provides a typical example. When the Supreme Court ruled that the inventory of the vehicle (including the unlocked glove compartment) was not unreasonable under the fourth amendment to the Constitution, the case was remanded to the South Dakota Supreme Court which had previously held otherwise. On reconsideration, the South Dakota court decided that the degree of intrusion permissible under the Federal Constitution (of which the U.S. Supreme Court is the final authority) is not permissible under the constitution of South Dakota (of which the State supreme court is the final authority). The State court accordingly held:

> ". . . noninvestigative police inventory searches of automobiles without a warrant must be restricted to safeguarding those articles which are within plain view of the officer's vision."[76]

That ruling would seem to clearly preclude the opening of even an unlocked glove compartment of the vehicle pursuant to an inventory and restrict the officers to securing items in plain view.

Other courts have chosen to limit the Supreme Court ruling in *Opperman* to its facts and thereby take a more restrictive approach to the inventory. Recently, in *State* v. *Goff*,[77] for example, the West Virginia Supreme Court held that an inventory search was unreasonable, in part, because there was no showing that the police saw any items of personal property in the interior of the vehicle to prompt the inventory. The court stated:

> "Although there is some divergence of opinion in this area, we believe that the more reasoned view requires a sighting of some personal property within the motor vehicle before an inventory search can be initiated."[78]

The court reasoned that given the purpose of the inventory to secure personal property from loss or theft, there is a diminished likelihood of such occurrences when there is no personal property visible.

**The Trunk**

The inventory in *Opperman* apparently did not extend to the trunk of the automobile. Nevertheless, the majority of lower courts have taken the position that the trunk area, like the interior and glove compartment, is a common repository for personal property and therefore within the scope of a lawful inventory.

In *United States* v. *Martin*,[79] police officers inventoried an automobile in which two individuals had been arrested and which was to be towed to the police garage. Upon opening the trunk of the vehicle, the officers discovered a shotgun possessed in violation of Federal law. Following conviction the defendant appealed, contending that the inventory of the locked car trunk was distinguishable from that of the unlocked glove compartment in *Opperman* and should be ruled unreasonable. The Federal appeals court disagreed, noting that though the glove compartment in *Opperman* was unlocked, the automobile itself, like the car trunk in *Martin*, was locked. The court added:

> ". . . in both *Opperman* and the instant case a key had to be used before access could be made to the particular area where the search . . . was effected."[80]

The court thus concluded that the inventory of a locked vehicle trunk was no different from the inventory of a locked automobile and was equally reasonable.

Most State courts have taken the same view. In *State* v. *Ruffino*,[81] following the defendant's arrest on a minor charge, his automobile was impounded by the police and inventoried pursuant to police regulations. The inventory extended to the locked trunk of the car where a weapon and other evidence of a homicide were found. At the time of the arrest and inventory, the police had no reason to suspect that Ruffino had been involved in a homicide.

After concluding that the police were justified in conducting an inventory because the vehicle was lawfully impounded and the inventory was done pursuant to established regulations, the New Mexico Supreme Court held that it was reasonable to inventory the contents of the vehicle trunk. The court wrote:

> "To forbid entry into trunks as part of an inventory search would frustrate the very purpose of the inventory, since the trunk is a likely place for valuables to be stored."[82]

While a substantial majority of the courts, both State and Federal, have approved the inventory of an automobile trunk, at least one Federal appellate court and a few State courts have not. In *United States* v. *Wilson*,[83] the operator of an automobile was arrested by police for various traffic infractions. Because the operator was a nonresident, the officer decided to require him to post an appearance bond, and because of his erratic driving, the officer determined to have the vehicle towed from the street. A routine inventory conducted prior to the towing located a sawed-off shotgun subsequently used to obtain the defendant's conviction. On appeal, the U.S. Court of Appeals for the Eighth Circuit concluded that the impounding of the vehicle was reasonable, but that the intrusion into the trunk of the vehicle was excessive "in light of the individual's greater expectation of privacy in the locked trunk of his automobile and in view of the particular facts of this case."[84] The court held:

> "Absent a special justification for a more extensive intrusion, the routine search of a locked automobile trunk is unreasonable under the Fourth Amendment. . . . The police could have inventoried the locked trunk as a single unit."[85]

Essentially, the same approach was followed by the Supreme Court of Washington in *State* v. *Houser*,[86] where the court held that "an officer may not examine the locked trunk of an impounded vehicle in the course of an inventory search absent a manifest necessity for conducting such a search."[87]

Neither of the foregoing cases proscribes the inventory of an automobile trunk in every circumstance. Rather, they would limit the routine inventory to the vehicle's interior, and because of a greater privacy expectation, allow a trunk inventory only when special facts exist to suggest its necessity.

**". . . in balancing the caretaking responsibilities of police against the privacy expectations in automobiles, most courts resolve the question in favor of allowing routine inventories of lawfully seized vehicles."**

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Despite the more restrictive view taken by a few courts regarding the lawful scope of an automobile inventory, it is undoubtedly true that the majority of both Federal and State courts approve the broader scope and will generally uphold an inventory of a vehicle's interior, including a glove compartment or console (locked or unlocked), as well as the trunk area.

The general rule is perhaps best described by the following statement of the U.S. Court of Appeals for the Fifth Circuit in *United States* v. *Edwards*:

> "Only so long as the scope of the search is reasonable, taking into consideration the three interests to be protected by the inventory, will it be held to be a constitutionally permissible intrusion . . . the three interests set forth in *Opperman* can be adequately protected if the inventory search is limited in scope to those places within the interior or trunk of an automobile where, under the particular circumstances of the case, property of the owner or occupant can reasonably be expected to be found." [88]

## SEPARATE CONTAINERS

As the foregoing discussion illustrates, in balancing the caretaking responsibilities of police against the privacy expectations in automobiles, most courts resolve the question in favor of allowing routine inventories of lawfully seized vehicles. However, separate containers present special problems.

Just as vehicles frequently become the responsibility of law enforcement officers as a part of their community caretaking function, so also do other kinds of containers. Sometimes these containers are themselves located inside an automobile. Frequently, they are seized under circumstances which in no way implicate an automobile inventory.

In either case, whether with vehicles or separate containers, the police are confronted with essentially the same three distinct needs to which the Supreme Court alluded in *South Dakota* v. *Opperman*: [89]

1) The need to protect the owner's property while it remains in the custody of the police;
2) The need to protect the police from disputes over lost or damaged property; and
3) The need to protect the police from danger.

In other words, the community caretaking responsibilities are the same whether the property is a vehicle or a separate container.

However, as noted earlier, the courts tend to balance the caretaking responsibility of the police against the degree of privacy expectation one has in the area searched. In *Opperman*, the Supreme Court struck the balance in favor of allowing the inventory. In doing so, the Court recognized the historic distinction between automobiles and other kinds of property, a difference which is based in part on the notion that "the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office." [90] Because of that distinction, warrantless searches of vehicles have been upheld under circumstances which do not justify comparable searches of other kinds of property. [91]

The distinction has been further emphasized by subsequent cases, beginning with *United States* v. *Chadwick*. [92] Decided the year after *Opperman*, *Chadwick* involved the warrantless search of a double-locked footlocker by drug enforcement officers. Despite the Government's contention that the officers had probable cause to believe evidence was in the footlocker and that the Court had allowed warrantless searches of vehicles under similar circumstances, the Court declined to expand the so-called "vehicle exception" to include such containers as the footlocker. The Court pointed out that while containers may share certain characteristics with vehicles, such as the capacity to be removed from the jurisdiction, there is nevertheless an important difference:

> "The factors which diminish the privacy aspects of an automobile do not apply to (defendant's) luggage. . . . Unlike an automobile, whose primary function is transportation, luggage is intended as a repository of personal effects. In sum, a person's expectations of privacy in personal luggage are substantially greater than in an automobile." [93]

Whereas in *Chadwick* the Supreme Court declined to expand the "vehicle exception" to movable containers such as luggage, in two more recent cases, *Arkansas* v. *Sanders* [94] and *Robbins* v. *California*, [95] the Court disapproved the warrantless search of separate containers found inside automobiles which were themselves lawfully searched under the "vehicle exception." In each case, the Court distinguished between the privacy expectations associated with vehicles and the separate containers found inside. Furthermore, in *Robbins*, the Court declined to draw a distinction between containers such as luggage, which are ordinarily used as repositories for personal effects, and others such as opaque plastic bags which are not. The Court held instead that unless the container is such that its contents may be said to be in plain view those contents are fully protected by the fourth amendment.

It should be emphasized that these decisions essentially interpret the application and scope of a "vehicle exception" search and do not directly involve the inventory. Furthermore, on June 1, 1982, the Supreme Court in *United States* v. *Ross*[96] reversed its holding in *Robbins* and ruled that a lawful search of an automobile pursuant to the vehicle exception can extend into separate containers located within the vehicle. Nevertheless, *Chadwick* and its progeny have undoubtedly contributed to a divergence of view among the lower courts regarding the authority of police to inventory the contents of containers.

Generally, the lower court decisions fall into two categories: Those which would allow the *routine* inventory of the contents of containers in the same manner as vehicles, and those which would treat separate containers differently from vehicles and would require some particular justification for the inventory of their contents. Unfortunately, the courts appear to be almost equally divided on the issue, and a general rule is indiscernible. The cases discussed below, and those cited in the footnotes, may be useful to illustrate the differing viewpoint and to assist in determining the current rule in a particular jurisdiction.

### Routine Inventory of Containers Approved

Those courts which have approved the *routine* inventory of the contents of containers have tended to place emphasis on the caretaking responsibilities of the law enforcement officers and accordingly have restricted the application of the *Chadwick-Sanders* line of cases to the vehicle exception.

In *United States* v. *Smith*,[97] police officers inventoried the contents of a plastic bag, a flight bag, and a suitcase located in the trunk of a lawfully impounded car following the arrests of its occupants. Evidence of a bank robbery was found. Although the Federal appellate court disposed of the case without having to rule on the lawfulness of the inventory, the court nonetheless offered the following comment in response to defendants' contention that the *Chadwick* and *Sanders* decisions prohibited the search of the containers:

> "True (those cases) held that absent exigent circumstances a warrantless search of luggage believed to contain contraband cannot be justified under the 'automobile exception.' But that rule applies to criminal investigative searches where probable cause is of the essence. The search . . . in the instant case was of a noninvestigative, routine caretaking nature in which probable cause as to the car's contents was irrelevant."[98]

Other Federal courts have approved the routine inventory of containers. In *United States* v. *Rega*,[99] Federal Drug Enforcement Administration agents inventoried the contents of the codefendant's purse following her arrest. In declining to suppress contraband found inside the purse, the Federal district court stated:

> "It was during this inventory and not through any investigatory search that the items in question were discovered and seized. Once the defendant was lawfully in custody, the officer had full authority to catalogue her clothing and personal effects and to seize items of evidence revealed in the process."[100]

Several State courts have likewise upheld the routine inventory of containers, relying upon the caretaking rationale of *Opperman*. Typical is *State* v. *Crabtree*.[101] The defendant was stopped on a traffic violation by a Utah highway patrolman and was arrested after it was learned that a fugitive warrant was outstanding. The defendant's car was locked after its contents (including a suitcase) were removed and taken to the police station. At the station the officer opened the suitcase and inventoried its contents which included a weapon, a large sum of money, and a controlled substance. In approving the inventory, the Utah Supreme Court likened the facts of the case to those in *South Dakota* v. *Opperman*. The court further observed in a footnote that while the *Opperman* decision involved the inventory search of an automobile, "both the language of the decision and the rationale underlying the holding do not limit the matter to automobiles specifically.[102]

One additional State court case, *Hamby* v. *Commonwealth*,[103] is of interest because of the court's response to a defendant's contention that police should not have opened a closed briefcase but should have inventoried it as a unit. The Virginia Supreme Court rejected the argument and stated:

**"The inventory search is intended to be a benign, noninvestigatory procedure designed to protect the interests of the property owner, the police, and society. It is not a substitute for a search warrant."**

> "We are not convinced . . . that law enforcement officers can protect an owner's property and themselves from claims over lost or stolen property by simply sealing and removing personal luggage as a whole. Without a record of the contents of such luggage, police are bereft of any means to verify what property was actually present at the time of its taking . . . [I]f the basis behind the inventory search is to protect any valuables which might be present, it is illogical to prohibit law enforcement officials from searching those areas wherein valuables are more likely to be kept." [104]

## Routine Container Inventories Not Approved

Federal and State courts which have declined to approve the *routine* inventory of containers tend to place particular emphasis on the greater privacy expectation one generally has in containers such as personal luggage in contrast to vehicles. Because of their greater focus on the privacy expectation, those courts also tend to define the police caretaking responsibility in somewhat narrower terms.

*United States* v. *Schleis* [105] is illustrative. The defendant's locked briefcase was opened and searched at the police station following his arrest. Inside the officers found 2 pounds of cocaine which were offered in evidence in the successful prosecution of the defendant. A Federal appellate court upheld the search. An appeal was taken to the Supreme Court, where the case was remanded to the appellate court for reconsideration in light of *Chadwick*. The appellate court then held the search unlawful, rejecting several theories proposed by the Government, including the inventory argument. The court concluded that the search was investigatory in nature, and further, that the defendant's briefcase was distinguishable from the automobile in *Opperman*. The court stated:

> "Luggage can be more readily reduced to possession and secured than an automobile. There is a greater expectation of privacy in the contents of luggage than in an automobile. Moreover, the valid governmental interests served by an inventory search could have been satisfied here by inventorying the locked briefcase as a unit. There was no necessity to open the briefcase and inventory its contents." [106]

More recently, another Federal appellate court took the same position. In *United States* v. *Monclaro-Cruz*, [107] the defendant was arrested as an illegal immigrant and taken to the Immigration Office where her purse was searched. The Government sought to justify the warrantless search as a routine inventory. The Federal appellate court rejected the argument and held:

> "(Defendant's) purse could have been well-protected from theft or destruction without searching it; the possibility of a claim against the police over lost or stolen property would be reduced if the purse had been immediately secured without emptying its contents; and the police had no reason to believe that the purse contained weapons or explosives." [108]

Several State courts have also disapproved *routine* inventories of containers, either by applying the *Chadwick* rationale as noted in the foregoing Federal cases, [109] or relying upon their State constitutions to support rules which are stricter than those allowed under the Federal Constitution. [110]

Those courts which have disapproved *routine* inventories of separate containers do not proscribe inventories of such containers altogether. Rather, they require some justification beyond that which may support the *routine* inventory of an automobile. For example, in *United States* v. *Bloomfield*, [111] the U.S. Court of Appeals for the Eighth Circuit held that the routine inventory of a "sealed knapsack" removed from a lawfully impounded vehicle was unreasonable because the knapsack could have been left unopened and inventoried as a unit. The court indicated, however, that other circumstances could justify a different result:

> "If a container which is to be inventoried is not securely closed so that the articles within could possibly fall out, it may be wiser for police to itemize the articles. . . . And if police have some reason to believe a container which is to be inventoried contains instrumentalities which could be dangerous even when sitting idly in the police locker, the police may, and should, inventory the contents of the container." [112]

Thus, the unsecured nature or condition of a container or the reasonable likelihood that it contains items which constitute a danger to police during storage (e.g., explosives or incendiary substances) could readily justify an inventory of the contents. The point is that those courts which take a more restrictive view of the applicability of the inventory search to separate containers require some such justification.

## SUMMARY

The U.S. Supreme Court has approved, as a community caretaking function, the *routine* inventory of the contents of a lawfully seized automobile conducted pursuant to standard police policy. A substantial majority of State and lower Federal courts have interpreted the permissible scope of the inventory to include areas within the vehicle where personal property is ordinarily stored. These areas include the glove compartment and the trunk.

With respect to separate containers, whether located in an automobile or otherwise seized by police, the courts are closely divided as to whether an inventory of their contents may be conducted *routinely* or whether special circumstances are necessary to justify the procedure. Until such time as a uniform rule emerges, it is incumbent upon law enforcement officers to ascertain and apply the law of their respective jurisdictions relating to separate containers.

One final reminder: Despite the divergency of views among the courts regarding certain aspects of the inventory search, there is a common denominator. The inventory search is intended to be a benign, noninvestigatory procedure designed to protect the interests of the property owner, the police, and society. It is not a substitute for a search warrant. **FBI**

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**Footnotes**

[58] 428 U.S. 364 (1976).

[59] *See Preston* v. *United States*, 376 U.S. 364 (1964); *Terry* v. *Ohio*, 392 U.S. 1 (1968); *Chimel* v. *California*, 395 U.S. 752 (1969); *Cupp* v. *Murphy*, 412 U.S. 291 (1973).

[60] *Supra* note 58, at 375; *see also*, *Cady* v. *Dombrowski*, 413 U.S. 433 (1973).

[61] 484 P.2d 84 (Cal. 1971).

[62] *Id.* at 90.

[63] *See State* v. *Opperman*, 247 N.W.2d 673 (S.D. 1976).

[64] 635 F.2d 174 (2d Cir. 1980), *cert. denied*, 101 S.Ct. 2332 (1980).

[65] *Id.* at 176. *See also*, *United States* v. *Scott*, 665 F.2d 874 (9th Cir. 1981).

[66] 566 F.2d 1143 (10th Cir. 1977).

[67] *Id.* at 1145.

[68] *South Dakota* v. *Opperman*, 428 U.S. 364, 376 (1976).

[69] *See, e.g.*, *United States* v. *Scott*, 665 F.2d 874 (9th Cir. 1981) (vehicle interior); *United States* v. *Leonard*, 630 F.2d 789 (10th Cir. 1980) (glove compartment); *United States* v. *Edwards*, 577 F.2d 883 (5th Cir. 1978) *en banc*, *cert. denied*, 439 U.S. 968 (1978) (floorboard); *State* v. *Gibeson*, 614 S.W.2d 14 (Mo. App. 1981) (under front seat); *Martasin* v. *State*, 271 S.E.2d 2 (Ga. App. 1980) (console); *People* v. *Kramer*, 303 N.W.2d 880 (Mich. App. 1981) (interior of van); *Lively* v. *State*, 427 A.2d 882 (Del. Super. 1981) (beneath driver's floor mat).

[70] 604 F.2d 121 (2d Cir. 1979).

[71] *Id.* at 166.

[72] 288 N.W.2d 354 (Mich. App. 1979).

[73] *Id.* at 355. *See also*, *State* v. *Callaway*, 308 N.W.2d 897 (Wis. App. 1981).

[74] 308 N.W.2d 170 (Mich. App. 1980).

[75] *Id.* at 172.

[76] *State* v. *Opperman*, 274 N.W.2d 673 (S.D. 1976).

[77] 272 S.E.2d 457 (W. Va. 1980).

[78] *Id.* at 461. *See also*, *State* v. *Miller*, 420 A.2d 181 (Del. Super. 1980).

[79] 566 F.2d 1143 (10th Cir. 1977).

[80] *Id.* at 1145. *See also*, *United States* v. *Staller*, 616 F.2d 1284 (5th Cir. 1980), *cert. denied*, 449 U.S. 869 (1980); *United States* v. *Pappas*, 613 F.2d 324 (1st Cir. 1979); *United States* v. *Newbourn*, 600 F.2d 452 (4th Cir. 1979); *United States* v. *Barnes*, 604 F.2d 121 (2d Cir. 1979); *United States* v. *Edwards*, 577 F.2d 883 (5th Cir. 1978), *cert. denied*, 439 U.S. 968 (1978).

[81] 612 P.2d 1311 (N.M. 1980).

[82] *Id.* at 1313. *See also*, *People* v. *Meeks*, 570 P.2d 835 (Colo. 1977); *Griffin* v. *State*, 372 N.E.2d 497 (Ind. App. 1978); *State* v. *Roberson*, 384 A.2d 195 (N.J. Super. 1978); *States* v. *Lemacks*, 268 S.E.2d 285 (S.C. 1980); *States* v. *Roth*, 305 N.W.2d 501 (Iowa 1981); *States* v. *Prober*, 297 N.W.2d 1 (Wis. 1980); *People* v. *Godwin*, 288 N.W.2d 354 (Mich. App. 1979).

[83] 636 F.2d 1161 (8th Cir. 1980).

[84] *Id.* at 1163.

[85] *Id.* at 1165.

[86] 622 P.2d 1218 (Wash. 1980).

[87] *Id.* at 1226, 1227. *See also*, *State* v. *Goff*, 272 S.E.2d 457 (W. Va. 1980); *State* v. *Hatfield*, 364 So.2d 578 (La. 1978).

[88] 577 F.2d 883, 893 (5th Cir. 1978).

[89] *South Dakota* v. *Opperman*, 428 U.S. 364, 369 (1976).

[90] *Id.* at 367–368.

[91] *See, e.g.*, *Carroll* v. *United States*, 267 U.S. 132 (1925); *Chambers* v. *Maroney*, 399 U.S. 42 (1970).

[92] 433 U.S. 1 (1977).

[93] *Id.* at 765.

[94] 442 U.S. 753 (1979).

[95] 69 L.Ed.2d 744 (1981).

[96] S. Ct. (1982)

[97] 621 F.2d 483 (2d Cir. 1980), *cert. denied*, 449 U.S. 1086 (1980).

[98] *Id.* at 488.

[99] 496 F.Supp. 101 (S.D.N.Y. 1980).

[100] *Id.* at 105. *See also*, *United States* v. *Morales*, 635 F.2d 174 (2d Cir. 1980), *cert. denied*, 101 S.Ct. 2332 (1980); *United States* v. *Staller*, 616 F.2d 1284 (5th Cir. 1980), *cert. denied*, 449 U.S. 869 (1980); *United States* v. *Matthews*, 615 F.2d 1279 (10th Cir. 1980) *United States* v. *Manzanilla-de Jesus*, 507 F.Supp. 462 (S.D.N.Y. 1981).

[101] 618 P.2d 484 (Utah 1980).

[102] *Id.* at 485, note 4. *See also*, *Parris* v. *State*, 604 S.W.2d 582 (Ark. 1980); *Garner* v. *State*, 269 S.E.2d 912 (Ga. App. 1980); *Dearing* v. *State*, 393 N.E.2d 167 (Ind. 1979); *State* v. *Duplantis*, 388 So.2d 751 (La.1980), *cert. denied*, 449 U.S. 1014 (1980); *State* v. *Maxfield*, 427 A.2d 12 (N.H. 1981); *State* v. *Beaucage*, 424 A.2d 642 (R.I. 1981); *Girardi* v. *Commonwealth*, 279 S.E.2d 163 (Va. 1980), *cert. denied*, 451 U.S. 913 (1980).

[103] 279 S.E.2d 163 (Va. 1981).

[104] *Id.* at 166. The court in *Hamby* was careful to distinguish one of its earlier decisions, *Abell* v. *Commonwealth*, 272 S.E.2d 204 (1980), in which a warrantless search of a locked briefcase was held unreasonable. The court emphasized that the issue in *Abell* was whether the search was proper as an incident to arrest and did not address the question of an inventory.

[105] 582 F.2d 1166 (8th Cir. 1978).

[106] *Id.* at 1173.

[107] 662 F.2d 1285 (9th Cir. 1981).

[108] *Id.* at 1289. *See also*, *United States* v. *Bloomfield*, 594 F.2d 1200 (8th Cir. 1979); *United States* v. *Chadwick*, 532 F.2d 773 at 783 (1st Cir. 1976), wherein the appellate court ruled that two *locked* suitcases which had been opened and inventoried "could have been sealed with tape . . . or placed in a locked storeroom with the keys kept in an envelope along with other property of defendants." The court specifically expressed no opinion as to *unlocked* containers, and neither question was before the Supreme Court in its *Chadwick* decision.

[109] *Nealy* v. *State*, 400 So.2d 95 (Fla. App. 1981); *People* v. *Vellsf*, 419 N.E.2d 69 (Ill. App. 1981); *Smith* v. *State*, 427 A.2d 1064 (Md. Ct. Spec. App. 1981); *Commonwealth* v. *Benoit*, 415 N.E.2d 818 (Mass. 1981); *State* v. *Hall*, 279 S.E.2d 111 (N.C. 1981); *State* v. *Bramlett*, 609 P.2d 345 (N.M. 1980); *People* v. *Roman*, 422 N.E.2d 554 (N.Y. App. 1981); *State* v. *Charmley*, 631 P.2d 795 (Or. App. 1981); *State* v. *Houser*, 622 P.2d 1218 (Wash. 1981); *State* v. *Goff*, 272 S.E.2d 457 (W. Va. 1980); *State* v. *Prober*, 297 N.W.2d 1 (Wis. 1980).

[110] *State* v. *Daniel*, 589 P.2d 408 (Alaska 1979); *State* v. *Opperman*, 247 N.W.2d 673 (S.D. 1976).

[111] 594 F.2d 1200 (8th Cir. 1979).

[112] *Id.* at 1203; 101 S.Ct. 2332 (1980).

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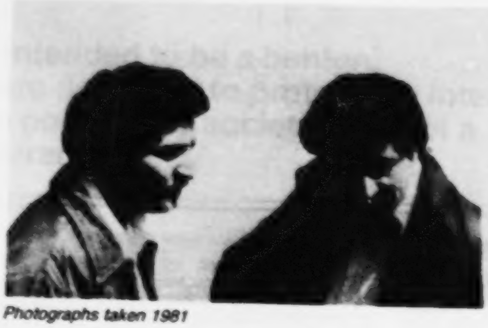
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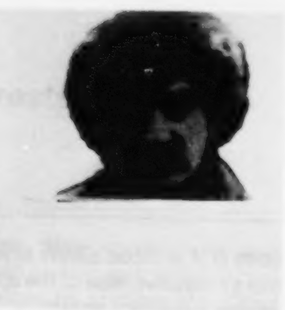
*Photograph taken 1978*

**WANTED**

## Luis Rosado

Luis Rosado, also known as Luis Rosado-Ayala, Luis Ayala Rosado, Luis Ayala-Rosado, Felipe Guzman

### Wanted for:

Interstate Flight—Armed Robbery

### The Crime

Rosado, a reported member of a terrorist group that has claimed credit for numerous bombings, is being sought for unlawful interstate flight to avoid prosecution for armed robbery. After being arrested for the armed robbery of a Highland Park, Ill., car dealership, he failed to appear for trial scheduled for March 5, 1981.

A Federal warrant was issued for Rosado's arrest on March 6, 1981, in Chicago, Ill.

### Description

| | |
|---|---|
| Age | 31, born August 24, 1950, New York, N.Y. |
| Height | 5'8" to 6'. |
| Weight | 160 to 185 pounds. |
| Build | Heavy. |
| Hair | Brown, slightly reddish. |
| Eyes | Brown/green. |
| Complexion | Medium (pockmarked). |
| Race | White (Puerto Rican descent). |
| Nationality | American. |
| Occupations | Cabdriver, car salesman, consultant Spanish affairs, laboratory assistant, porter, social worker. |
| Scars and Marks | Scar on scalp, right side of head. |
| Remarks | Prominent nose. |
| Social Security No. Used | 113-42-4152. |
| FBI No. | 630 331 W2. |

### Caution

Rosado should be considered armed and extremely dangerous.

### Notify the FBI

Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone number of which appears on the first page of most local directories.

### Classification Data

NCIC Classification:

PMCICOCO11PIPOPMCI09

Fingerprint Classification:

M 31 W IOO 11

I 28 W OMI

I.O. 4896

*Right middle fingerprint*

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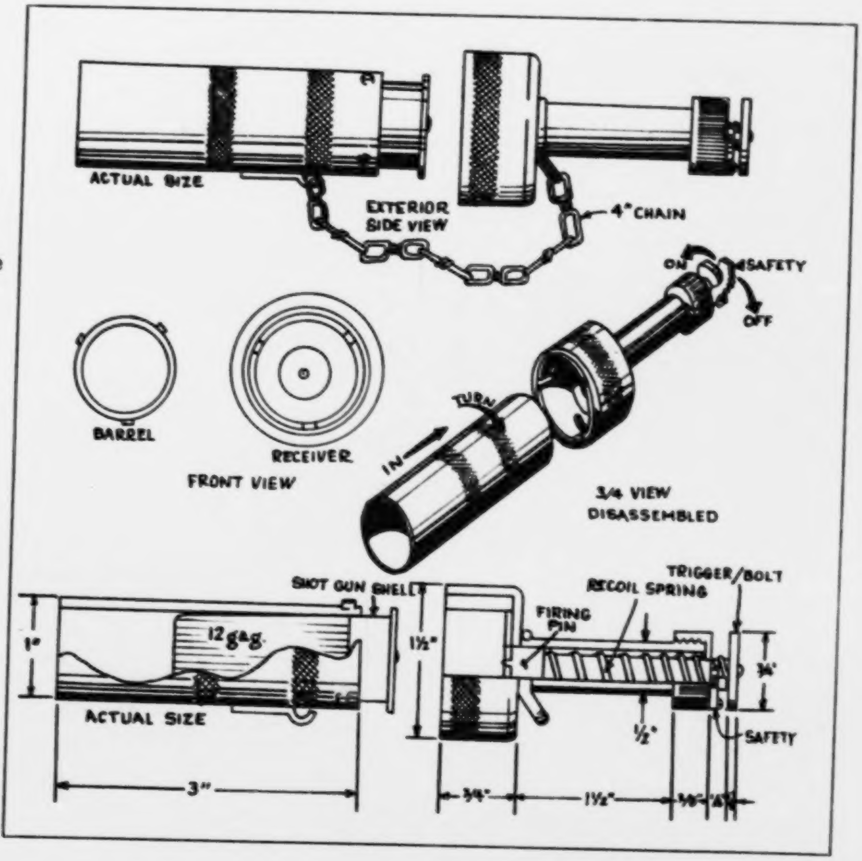
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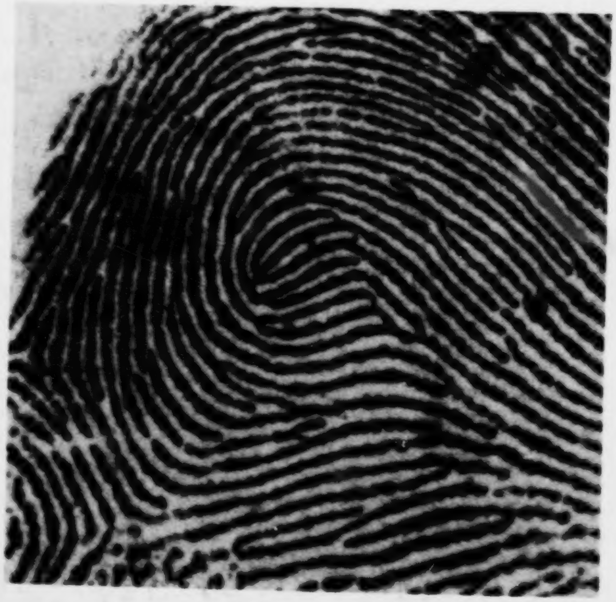

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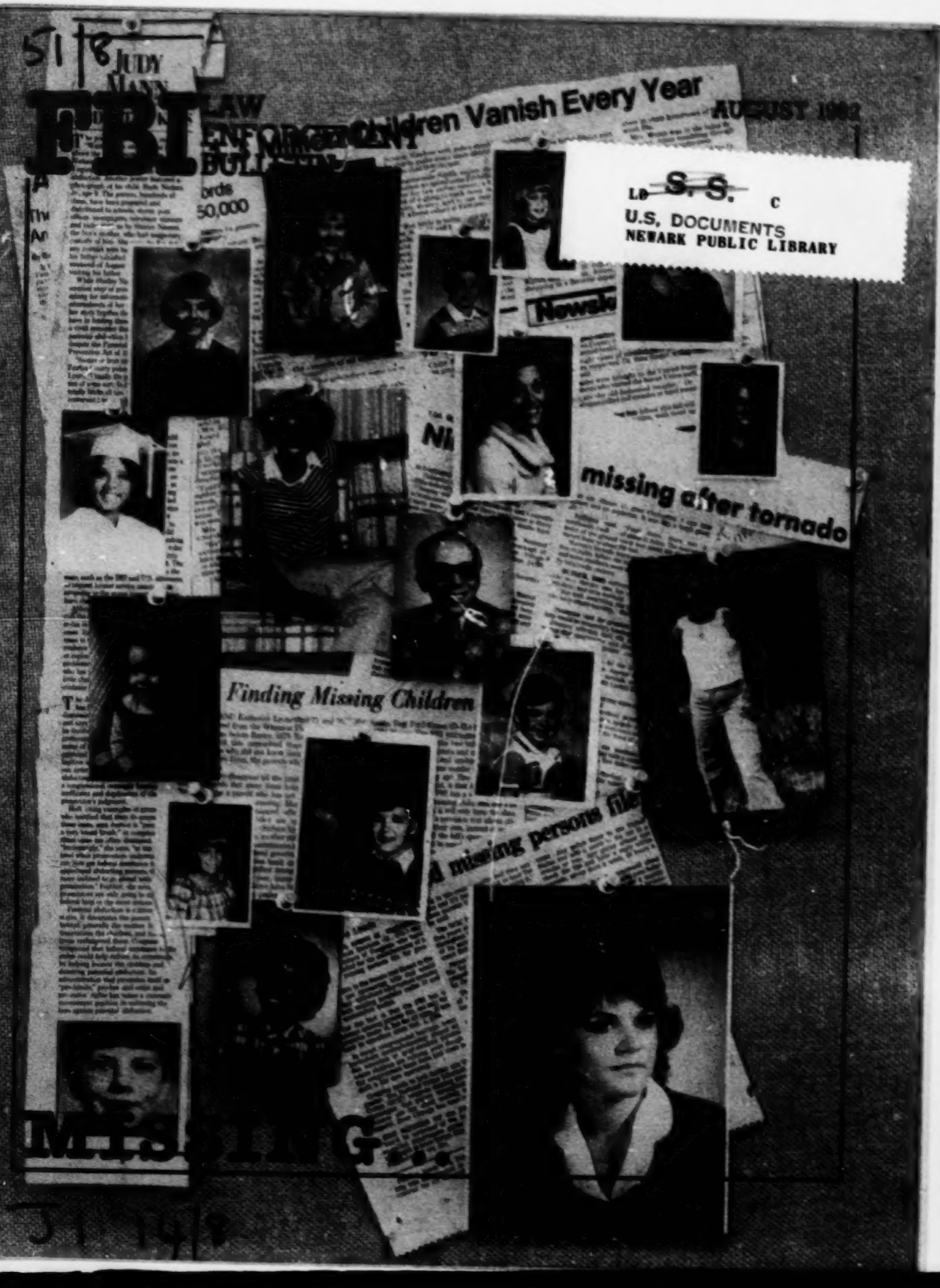
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Finding Missing Children
A missing persons file

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**FBI LAW ENFORCEMENT BULLETIN**

AUGUST 1982, VOLUME 51, NUMBER 8

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The NCIC's Missing Person File can be an invaluable tool to investigators in solving missing person cases. See Story p. 20.

**Federal Bureau of Investigation**
**United States Department of Justice**
**Washington, D.C. 20535**

**William H. Webster, Director**

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through February 21, 1983.

Published by the Office of Congressional and Public Affairs,
Roger S. Young
Assistant Director

*Editor*—Thomas J. Deakin
*Assistant Editor*—Kathryn E. Sulewski
*Art Director*—Kevin J. Mulholland
*Writer/Editor*—Karen McCarron
*Production Manager*—Jeffrey L. Summers

ISSN 0014-5688 USPS 383-310

# Director's Message

At the beginning of this year, Attorney General William French Smith assigned concurrent jurisdiction to investigate drug offenses to the FBI in cooperation with the Drug Enforcement Administration. This is part of an "overall effort to achieve more effective drug enforcement through coordinated efforts involving the Drug Enforcement Administration, the FBI, the United States Attorneys and other agencies in this and other Departments," according to the Attorney General.

The Attorney General praised the work of the Drug Enforcement Agency, saying that everyone at DEA "can be justly proud of their accomplishments." However, because of the magnitude of the drug problem today "for the first time since its establishment over 50 years ago, the full resources of the FBI will be added to our fight against the most serious crime problem facing our nation. . . ."

This move is part of the Justice Department's overall strategy to bring about more effective drug law enforcement through more coordinated efforts on the part of the DEA, the FBI, U.S. Attorneys, other agencies in the Justice Department, and other departments of the Federal Government. The DEA, according to the Attorney General, "will continue its fine work" and will be helped by this new cooperative effort.

The FBI's investigative effort in this area will be concentrated on major narcotics trafficking organizations, both those tied to traditional organized crime and not, and on high-level smugglers, distributors, manufacturers, financiers, and corrupt public officials who aid narcotics dealing. All the FBI's new authority will be exercised in close coordination with DEA.

We found that this close coordination could, and did, work in the 6 months before this new plan was announced. During that time, the number of joint investigations increased from 6 to 120 throughout the country. In that period, the FBI Executive Assistant Director for Investigations, Francis M. Mullen, Jr., acted as Administrator of DEA. From an administrative standpoint, this was a very good way of bridging the gaps that existed between the two agencies. We envision the continuation of this coordination, including cross-training of DEA and FBI Agents.

The resources of the FBI will be applied as they have been consistently in the past—that is, to do the work that State and local law enforcement cannot do, as defined by the Congress in its setting of Federal jurisdiction. Often, large interstate narcotics smuggling is beyond the budget, personnel, and monetary abilities of local departments. Adding FBI resources in manpower, geographic coverage, and newly gained experience in undercover and organized crime investigations to DEA's wealth of knowledge and experience in the drug field, we believe will have a substantial impact on the national drug problem.

William H. Webster

William H. Webster
*Director*
August 1, 1982

# Use of Aircraft in Law Enforcement

## An Illinois State Police Experience

By
R. J. MILLER
*Superintendent*
*Illinois State Police*
and
JOYCE M. HAYES
*Staff Assistant to*
*the Superintendent*
*Illinois State Police*
*Springfield, Ill.*

A motorist is stranded on a desolate Illinois highway. He begins to ponder how many miles he will have to walk to get to a telephone to call a garage to pick up his car, which has decided to take an unscheduled rest in the middle of nowhere. Just as he was about to give up hope of finding a good Samaritan who might help, he heard a loud voice booming from the sky above. Looking into the bright sunlight, he could see the outline of a small plane circling above him. Just as he was trying to decide what to do, a loud voice bellowed forth, asking the man whether he was having car trouble. He answered "yes" with one wave, as requested by the voice from above. His response was acknowledged and he was told to sit tight—help would be on the way. Within 20 minutes, an Illinois State Police officer was on the scene, alerting a towing service to the man's location. A couple of hours later, the man found himself back on his way again.

This scenario is similar to others of the past. Although State police aircraft are involved extensively in traffic enforcement, during FY-81, 269 motorist assists were also documented by the Air Operations Section.

*Superintendent Miller*

*Ms. Hayes*

Illinois State Police airplanes are in a position to spot a motorist in trouble. The airplanes are equipped with an outside speaker and public address system, making communication with motorists possible. In some instances, the officer in the aircraft may ask the motorist to communicate through hand and arm signals, so that a service truck can be dispatched immediately, thereby eliminating the necessity for a squad car to handle the needs of the motorist. The aircraft also has a CB transceiver on board, enabling officers to communicate with other CB operators who are in trouble, via channel nine—the national emergency channel. High-band and low-band police radios are also installed in the plane so contact can be made with ground patrol.

These aircraft, therefore, provide a very beneficial service to those motorists who find themselves stranded. However, as stated earlier, the aircraft are more commonly used for traffic enforcement.

Illinois was the third State to use the airplane to aid ground patrol in stopping speeders. In November 1959, three new planes were purchased for use in traffic control and other aerial operations. A crew of six was recruited from the ranks.

Predicting the speed of vehicles is a simple task. In various portions of the State, white lines have been painted across a lane of traffic, exactly 660 feet apart. (There are approximately 400 pairs of these white lines in Illinois.) Both the pilot of the aircraft and an observer activate their stopwatches when a vehicle crosses the first white line and stop them when it crosses the second. Using a scale retained in all aircraft, the pilot and the observer check the time lapse and the speed is mathematically computed. By using the scale, a vehicle's speed can be determined to the nearest 1/100th of a mile per hour. For example, a car traveling 60 miles per hour will take exactly 7.5 seconds to travel the 660 feet between the two white lines. The vehicle breaking the second line is then kept in direct view by the observer until it reaches the "catch car" on the ground.

There is no chance of "false echoes" or of radar picking up the wrong car. The electronic stopwatches (there are usually three or four in the aircraft for backup) are checked every 6 months for accuracy. Small errors—to the 1/100th of a second—are certified in writing. If the accuracy of the watch ever falls below the allowable limit, the watches are removed from service. However, certification records have indicated that the watches have needed very little adjustment. If there is a discrepancy in time when the pilot and observer compare their watches, the driver is given the benefit of the doubt. The fastest speed ever clocked in Illinois, using this measurement, was in excess of 132 mph on a two-lane roadway.

Neither the direction of the aircraft or vehicle, the altitude of the aircraft, nor the angle between the aircraft and the roadway reduces the accuracy of the check, as long as the observer can clearly see the lines and maintain constant visual contact with the vehicle.

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**"These aircraft . . . provide a very beneficial service to those motorists who find themselves stranded."**

The accuracy of the measurement used for detecting speeding has been upheld by the court system. Based upon the pilots' personal experience in the courtroom, the speeding arrests made by aircraft receive an overwhelming 95-percent conviction rate. This rate far surpasses the conviction rate experienced when other enforcement tools, such as moving or stationary radar, are employed.

The total number of arrests generated by the aircraft for FY-81 was 35,082, an increase of 171 percent over the 1980 total of 20,512. This significant increase in enforcement activity further demonstrates the expanding role the aircraft plays in the division's enforcement operation.

**The Pilots and Their Aircraft**

Until May 1981, there were 22 pilots, plus a chief pilot, who is responsible for training and maintenance and who serves as the principle operator of the department's twin-engined aircraft used for executive transportation. These 22 sworn pilots were located in various districts throughout the State; the chief pilot, a nonsworn employee, was stationed in Springfield. This geographical balance continues to be maintained even though there have been cutbacks in the total operation and manpower.

To be considered eligible to be a pilot within Air Operations, a sworn field officer must possess at least a private pilot's license. If the individual is selected, the department provides him training to receive an instrument and commercial rating. Officers, other than the chief pilot, who are assigned to flight duty, participate in the department's technical career path program which compensates the pilot for the "technical" nature of the position they hold.

Ongoing training is provided to the pilots. This training consists of a "flight check" at least every 6 months by the chief pilot, as well as frequent unannounced "spot checks." The pilots must also have a yearly physical. In addition, there is an aircraft maintenance program consisting of 50- and 100-hour inspections which occur between the required 400-hour inspection and the annual inspection.

The fleet itself consists of seven single-engined planes, which are used for patrol purposes, and one twin-engined aircraft which is used basically for executive transportation. These eight aircraft are geographically distributed to reduce flying time to service areas in various cities throughout Illinois.

The fixed-winged aircraft were selected rather than helicopters because of the size of the geographical area they are assigned to cover. Through rapid surveillance, aircraft can reduce the critical timelag between the occurrence of an accident or event requiring assistance and the arrival of the police or other emergency units on the scene. Fixed-winged aircraft are also more cost-effective.

Until late 1980, there were always two pilots in the aircraft whenever it was assigned to airspeed checks. However, in October 1980, in order to cut down on costs, a new program was instituted. Instead of a second pilot, a nonpilot State trooper is now assigned to ride in the aircraft as an observer with the pilot, and he is the one who does the actual clocking of vehicles. With this program, the aircraft can be used during virtually all the daylight hours by rotating pilots and observers, if needed. A decrease in the number of days on which flights were cancelled in FY-81 compared to FY-80 was the result of replacing one of these two pilots with a ground officer.

More time can now be spent on speed checks. The number of total arrests made by both aircraft and ground patrol has risen markedly from the approximate 30,000 average annual number. Along with the increase in the number of arrests made, it was discovered that during FY-81, the aircraft were used more efficiently with an average of 3.7 stops per hour compared to 3.5 stops per hour to flight devoted to traffic enforcement in FY-80.[1]

This program does not result in higher fuel costs because there is no increase in the number of hours flown. Fixed expenses, such as payroll, hangar rent, etc., also remain the same.

Until May of 1981, the average number of air patrol hours in one day was 5 to 6 hours, and the aircraft were operated 7 days a week during daylight hours. However, because of current Federal and State funding constraints, the planes are now used for patrol purposes only 60 tachometer hours per month. This is an average of 3 hours per day, 5 days per week. The funding constraints also resulted in a cutback in the number of sworn pilots needed, necessitating the reassignment of six officers to district oper-

**"Airplanes are very valuable to law enforcement in areas such as manhunts, surveillance, photography, emergency relays, as well as in the traditional traffic enforcement role, and should be part of every State police operation."**

ations. The airplanes are flown year-round, weather permitting. On selected holidays and on peak summer weekends, a double shift may be flown.

The total number of logged flying hours in FY-81 was 8,362.7 hours. The total number of hours logged between when the State police began its fleet operation and July 1981, is 69,182.8. In spite of this large number of tachometer hours, there has never been an aircraft crash.[2]

### Funding

From 1959 until FY-78, the fleet size of the aircraft operation remained at three. During FY-78, a grant was submitted to the National Highway Traffic Safety Administration to purchase and operate three additional aircraft for "line patrol" along interstate highways. The request was believed to be justified because of the increased amount of completed interstate highway, as well as the increased number of vehicles and licensed drivers.

The primary objectives of the proposed program were:

1) To reduce traffic accidents and their severity;
2) To assist motorists; and
3) To assist in supervising an orderly flow of traffic on the interstate and primary highway systems of Illinois.

The secondary objectives included:

1) Supporting and coordinating ground patrols;
2) Search and rescue;
3) Special surveillance and photography;
4) Emergency transportation; and
5) Traffic enforcement.

The Department of Transportation (DOT) gave approval to purchase only two aircraft. This necessitated a revamping of the original program and called for the use of the two aircraft on a concentrated patrol effort on Interstate 57.

In FY-79, another grant proposal was submitted asking for continued operating funds for the two aircraft on Interstate 57, as well as requesting funds for the purchase and operation of two additional aircraft to be used for concentrated enforcement efforts on Interstate 80 and Interstate 74. Funds for the purchase and operation of three helicopters were also requested for duties that would be better handled by rotary-winged aircraft. Permission was granted to purchase one additional aircraft for line patrol on Interstate 80.

In FY-80, an additional aircraft to be designated for special enforcement emphasis was requested to patrol a 127-mile section of highway. Operational funds for the airplane were also requested, as well as continued operational funding for the previous three aircraft. This request was approved.

In FY-81, funds for the operation of the four airplanes were received, along with funds for high-intensity lighting.

At the beginning of FY-82, all Federal funding for the aircraft program was terminated. A request was therefore submitted to the general assembly for replacement of the two aircraft used on Interstate 57, as well as operational funds for the four aircraft and equipment funds for four additional sky-timers. Because of money constraints currently being placed on State government, only replacement aircraft and operational funds were received.

### Department of Transportation Evaluations

Evaluations of the airplanes' effectiveness have been conducted by the DOT's Division of Traffic Safety. These evaluations were conducted for the 1978–1979 period. (The Division of Traffic Safety is currently working on an evaluation for the periods of April 1979, to March 1981.)

The conclusion of the initial interim evaluation stated that "the Illinois State Police aerial patrol was accomplishing its major objectives—reducing the number of accidents and accident severity along Interstate 57."[3] However, the number of motorist contacts was not as high as anticipated, and reductions in speed was not accomplished. Illinois DOT further stated that the project warranted continued funding, with increased emphasis in the areas of motorist contact and speed reduction.[4]

In a later evaluation of the same time period, it was determined that a significant decrease in accidents coincided with the operations of the aerial patrol and that the Illinois State Police aerial patrol had led to a reduction in the number and severity of accidents along rural portions of Interstate 57 and Interstate 80. However, the decrease in the average speeds of vehicles was small. It was also determined that air and ground patrols needed to be better coordinated to increase the number of apprehended violators.

It was further recommended by the DOT that the Illinois State Police continue the aerial patrol of the State's interstate highways, with emphasis on the concept of combined aerial and ground team effort and that highway safety funds continue to be used to underwrite the operational costs of aerial operations.[5]

The DOT, therefore, has concurred that the concept of aerial patrol for the Illinois interstate system is in the best interest of public safety. The program affords the Illinois State Police some operational flexibility, which it requires to be effective and efficient in its enforcement efforts.

### Current Problems

In order to use the aircraft most effectively during the present curbing of flight hours, flights for nonlaw enforcement-related activity are being curtailed when possible. When the aircraft are not in operation, the pilots are assigned to road patrol.

Since there is a reduction in the number of hours of operation, the fixed costs associated with the airplanes are a major consideration. To decrease the fixed costs, the crew has been reduced to two pilots, and there has been a geographical reapportionment of the aircraft work areas. Pilots are used on the road during nonflight periods. The procedures used for the depreciation and maintenance cycles are being evaluated. It is also being determined whether the best possible locations for hangars and office facilities are being used.

In the past, the weakest element of the air operation has been the ground support provided. It was determined through a staff study that to be most cost-effective, two chase cars should be used with an objective of 4.1 stops per hour, per trooper.

An evaluation was recently conducted to determine what type of replacement aircraft could be purchased at a more reasonable price than those currently being used. Consideration was given to a smaller aircraft; however, it was decided that the present type of aircraft be retained because of safety, necessity to transport personnel, and its overall versatility.

Consideration is now being given to reduce the size of the fleet so that each plane's use will be increased, and fixed costs can be reduced. A cost benefit analysis will be conducted to determine if increased use is worth the loss of coverage allowed by the present geographically distributed airplane sites.

### Summary and Analysis

The airplane is an expensive tool for use in law enforcement because of high fixed costs, particularly for pilots' salaries and aircraft depreciation. However, on a "per mile" basis, the airplanes used in line patrol are no more expensive than equivalent patrol on the ground, and they are definitely superior in terms of area patrolled.[6]

Airplanes have not proved cost-effective in terms of cost incurred for "activity rendered." This is primarily because the aircraft have not been used to their fullest capabilities. For instance, we could increase aircraft operation substantially through the number of hours flown, increase the number of stops for traffic violations and motorists assists each hour, and increase ground support from two chase cars to four for maximum activity and productivity. If the aircraft were used to the fullest extent, they would become cost-effective.[7]

Airplanes are very valuable to law enforcement in areas such as manhunts, surveillance, photography, emergency relays, as well as in the traditional traffic enforcement role, and should be a part of every State police operation. However, it is also important that these planes be made available to agencies such as the Department of Conservation, the FBI, and local law enforcement agencies in order to provide the most efficient and effective law enforcement services to the citizens of the State.

**FBI**

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**Footnotes**

[1] Richard A. Raub and Bobby L. Henry, Sr., *Aircraft Operating Activity, Two Year Period—FY 80 and FY 81*, Illinois Department of Law Enforcement, Springfield, Ill., p. 7.

[2] Area patrol aircraft are assigned to various sections of the State and are used mainly for traffic enforcement in sensitive areas, such as high-accident areas, "no passing" zones, and truck weigh-in stations. Area patrols are flown when there is at least a 2,000-foot ceiling and at least 5-mile visibility. Line patrol aircraft are assigned areas of interstate highways. Officers observe the highway linearly, keying on accidents, stalled vehicles, traffic backups, and reckless driving. When an emergency is encountered, the aerial patrol stays over the area, pursues, maintains contact, or takes other action appropriate to the situation.

Interstate line patrols are flown when there is at least a 1,000-foot ceiling and at least a 5-mile visibility.

Normal patrols are flown at an altitude of from 1,000 feet to 2,500 feet, at approximately 135 m.p.h.

[3] P. P. Madonia and R. A. Raub, *Interstate Aerial Patrol Illinois State Police Interim Evaluation*, Illinois Department of Transportation, Division of Traffic Safety, Springfield, Ill., May 1979, p. 8.

[4] Ibid.

[5] James P. O'Brien and Charanjit S. Sidhu, *Evaluation of Aerial Patrols of Interstate Highways by the Illinois State Police 1978–1979*, Illinois Department of Transportation, Division of Traffic Safety, Springfield, Ill., April 1980, pp. 12–14.

[6] Richard A. Raub and Bobby L. Henry, Sr., "Cost of Using Airplanes in Traffic Law Enforcement: A Case Study," *Traffic Quarterly*, vol. 35, No. 1, January 1981, pp. 82–83.

[7] Ibid, p. 83.

# Using Psychological Consultants in Screening Police Applicants

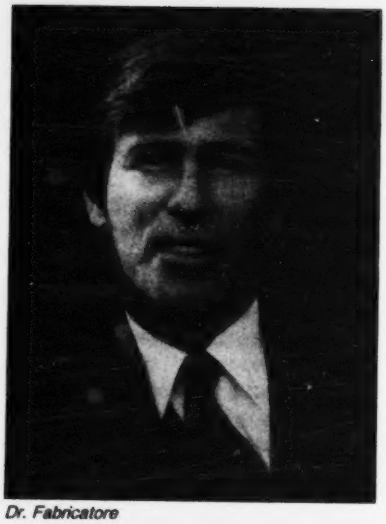
BY
SUSAN SAXE, Ph. D.
*Staff Psychologist*
*Los Angeles Police Department*
and
JOSEPH FABRICATORE, Ph. D.
*Licensed Psychologist and*
*Certified Management Consultant*
*Los Angeles, Calif.*

Since the Kerner's Commission recommendation in 1967 that all police officers be psychologically evaluated, psychological screening of applicants has become a routine component of the hiring process in many police agencies. Although the psychological evaluation process is widely used, it has not always been well understood or used to maximum effectiveness. Therefore, it is necessary to clarify some of the basic issues involved in effectively incorporating the "psychological" into the law enforcement administrative process.

## Stress, "Liability-Prone," and Negligent Admission/Retention

Research shows that excessive stress can lead to aggressive and unconventional behavior, as well as mental and physical dysfunctions on the job.[1] Police work is a well-known, high-stress occupation. Stress can be a significant factor in causing serious and expensive problems, but the stress tolerance level of officers or applicants can be a significant factor in preventing problems. People have different ways of coping with stress. Some individuals are emotionally "liability-prone." These individuals have an increased propensity to develop serious behavioral, psychological, and physical problems. They may become a serious threat to themselves, fellow officers, the welfare of the community, and the agency budget.

*Dr. Saxe*



*Dr. Fabricatore*

Apart from the obvious moral obligation law enforcement agencies have to ensure that their officers do not abuse their powers, inappropriate police behavior is expensive. The cost of investigating and processing personnel complaints is high. Disciplinary actions often include suspension, which reduces manpower. In addition, lawsuits and civil claims are costly in both dollars and manpower and are devastating to agency morale. The courts have identified "negligent admission" and "negligent retention" of officers as agency liabilities. Most agencies can trace a major portion of their unfavorable incidents to a relatively small number of officers. It is in the area of identifying applicants whose behavior will be costly to the agency that psychological screening efforts can be most effective.

## Strategies—"Select In" or "Screen Out"

Too often, police administrators are led to believe in a "select in" strategy, which suggests that psychological evaluations can aid in selecting the best candidate for police work. This is not quite true. Psychological input can be helpful in deciding which individuals within an agency or department are suitable for specific assignments, such as Special Weapons and Tactics (SWAT), hostage negotiation, or bomb squads, but the most effective use of psychological evaluation is to "screen out" or identify those applicants who may not be emotionally suitable or may be a high risk for law enforcement. In our experience, the percentage of applicants psychologically unsuitable typically ranges between 5 percent and 20 percent of the applicant pool.

The former strategy—"select in"—implies a precision and level of accuracy that psychologists do not possess and psychological procedures do not produce. In addition, this strategy ignores the possibility that future events, such as personal problems, could severely impact applicants initially judged to be acceptable and cause them to become high-risk employees at a later time.

Unsuitable applicants do not always appear to be inappropriate. Applicant pools approximate the normal curve—some individuals will appear to be excellent candidates, some will be obviously unacceptable, and the great majority will be somewhere in the middle. Applicants in this middle range who, in the judgment of a psychologist, demonstrate risk of engaging in liability-resulting behavior should be screened out. This decision is not always clear, but in admitting individuals to law enforcement, judgmental decisions should be made with caution.

Other mechanisms should exist in the screening process to minimize possible decision errors. Included should be an appeal or review process conducted at a higher administrative level.

## How to Select and Best Use a Psychological Consultant

It would be ideal for law enforcement agencies to have a full-time mental health professional as part of the staff. In this case, the professional should be involved in an orientation period long enough to provide familiarity with police management, police officers' tasks, and criteria for successful job performance. Since the majority of police agencies do not have or cannot afford full-time mental health professionals, outside consultants are used for a variety of psychological services, including the psychological

**"It is the psychologist familiar with law enforcement who renders a clinical judgment that brings expertise and credibility to the screening process."**

screening of applicants. Outside consultants may be psychologists, psychiatrists, management consultants, and on occasion, physicians. Most often, a licensed professional or certified consultant is required.

An important consideration in choosing a professional for a department is the person's ability to relate to the police organization and to become knowledgeable in police consultation. Police agencies are approached by professionals from all areas and backgrounds who wish to become associated with an agency or propose a project on a fee-for-service or contract basis. In rural areas and small towns, police organizations sometimes develop working arrangements with university professors. In some cases, research academicians look upon police officers as subjects for data-gathering and fail to understand totally the needs of police officers and administrators.

Academic persons working in applied areas or professionals who have done research in areas of police psychology are sometimes better prepared to begin consultation in law enforcement. It is, however, important that such professionals also possess training in the area of identifying clinical or personality issues that could impair police officers' performance. Consultants who are not familiar with the job should approach the consultation task initially as a student, and police agencies should insist on exposing them to relevant areas of police work.

The director or chief of police will often be the primary contact for the consultant. The psychological screening information is usually transmitted directly to him or to another previously designated representative. In most cases, the decision to hire is made by the chief of police after background results, medical results, psychological results, and in some cases, polygraph results are available. Some agencies prefer either a "yes or no" response as to whether an applicant is suitable for police work. This response may be verbal, followed by a written report. Some police administrators prefer to meet with the consultant to discuss each applicant. However, in most cases, a detailed written report including the background as reviewed by the consultant, the results of any psychological tests administered, interview data, and a summary and recommendation is submitted to the department.

The consultant should function as part of a team that includes all those involved in processing applicants. It is strongly desirable for the consultant to meet with all persons in the system, including the training officers who will eventually complete the screening process by either recommending recruits for permanent status, probation, or termination. The consultant should know the training officer's perspective and be aware of any past psychological problems of the recruits. The training officer should know on what basis the psychologist will recommend marginal applicants be accepted with the hope they will develop as suitable officers during probation.

Consultants should be willing to explain and defend screening decisions should it become necessary. When an applicant appeals a disqualification, the consultant should be available to appear before a civil service board or in court, if necessary.

In many cases, a psychologist or other professional will be hired solely to provide preemployment psychological screening. After the agency develops confidence in him, the consultant may be called upon to perform psychological "fitness for duty" evaluations on officers who have demonstrated patterns of excessive-force complaints or highly unusual or "liability-prone" behavior. Also, officers applying for special assignments, such as bomb squad technicians or hostage negotiators, may be evaluated to ensure that persons chosen are the best suited for the job. In these cases, the officer's personnel file and work history provide valuable information regarding past performance. Information on the number and nature of complaints against the officer, sick time taken, and performance under stress provides valuable input for the psychological consultant.

In all cases, it is important to remember that the decision as to who will be selected for employment and which officers will receive specialized assignments remains in the hands of the administration. The psychologist or consultant only provides specialized information and judgments that will be taken into consideration along with other important factors. In some instances, police administrators may choose officers who have not been recommended by the psychologist. Often, in these instances, the psychological consultant can identify areas of needed development and can suggest to the administration ways of supporting individual development.

### Screening Components

Police administrators and managers are often concerned with the validity of psychological tests. Psychological instruments and procedures were developed through scientific and statistical investigation, but the relevance of any single statistical score to a well-integrated psychological judgment is often overemphasized. Good decisions require information. The three best sources of information in evaluating law enforcement applicants are:

1) Psychological tests;
2) Background information; and
3) An indepth or "clinical" interview by a psychologist knowledgeable in law enforcement.

All information developed in the preemployment stages could reasonably be used by a clinical psychologist. Typically, most psychologists choose the Minnesota Multiphasic Personality Inventory (MMPI), the Sixteen Personality Factor Questionnaire (16PF), or the California Psychological Inventory (CPI). Extensive information exists on these instruments and their use in law enforcement screening;[2] however, psychologists may vary in the psychological tests they use depending on their training and experience.

Some psychological tests, such as the MMPI and the 16PF, can be computer scored, but a psychologist must review and interpret the results on an individual basis. Because most computer interpretations of the MMPI are based on the assumption that the test applicant is a mental patient or an outpatient in psychotherapy, negative or pathological information is likely to be emphasized. The MMPI can be extremely useful in screening, but it must be interpreted by a professional who is knowledgeable in both the test's subtleties and law enforcement.

### The Psychologist as an Expert Judge

In the psychological screening approach, the psychologist plays a critical role in integrating psychological test results, background information, and interview data in order to arrive at a judgment of unsuitability. This is a "clinical" or expert judgment, not a statistical or scientific outcome. Studies have been done relating various kinds of biographical or psychological test score information to criterion variables, such as disciplinary actions, number of arrests made, commendations, sick time taken, on-the-job automobile accidents, etc. These studies are helpful in suggesting which tests and criteria may be of potential benefit, but to rely totally on test scores and correlations would be inappropriate. It is the psychologist familiar with law enforcement who renders a clinical judgment that brings expertise and credibility to the screening process.

The psychological consultant, properly trained and working as support for management, can maximize the success and professionalism of the screening and selection process.

Psychologists cannot predict the future. However, assuming they know the intricacies of a police officer's job, they can develop relevant information regarding an individual's emotional functioning in a law enforcement position and render a judgment about an individual's suitability. Psychological screening minimizes the admission of inappropriate applicants and is consistent with the safeguards and precautions that the law and commonsense dictate. **FBI**

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**Footnotes**

[1] W.D. Haynes, *Stress Related Disorders in Policemen* (San Francisco: R & E Research Associates, Inc., 1978); R.H. Rahe and E.K.E. Gunderson, *Life Stress and Illness* (Springfield, Ill.: Charles C. Thomas, 1974); M. Reiser, "Stress, Distress and Adaptation in Police Work," *The Police Chief*, January 1976.

[2] J. Gottesman, *The Utility of the MMPI in Assessing the Personality Patterns of Urban Police Applicants* (Hoboken: Stevens Institute of Technology, 1975); S.J. Saxe and M. Reiser, "A Comparison of Three Police Applicant Groups Using the MMPI," *Journal of Police Science and Administration*, vol. 4, No. 4, 1976; J. Fabricatore, F. Azen, and H. Snibbe, "Predicting Performance of Police Officers Using the 16 Personality Factor Questionnaire," *American Journal of Community Psychiatry*, vol. 6, No. 1, 1978; R.H. Blum, *Police Selection* (Springfield, Ill.: Charles C. Thomas, 1964).

Forensic Science

By
PAUL PANE
*Criminal Identification Specialist*
*Bureau of Criminal Statistics and*
*Special Services*
*California Department of Justice*
*Sacramento, Calif.*

# Dental Identification Program: An Overview

Skeletal remains are unearthed in a desert. A woman's body is washed up on shore. The multilated and scorched body of a man is found in a vacant field. Many times, in cases such as these, the identity of the body is never known. To enhance the probability of identification, California implemented in 1979 the first statewide dental identification program in the United States. The program, which is administered by the California Department of Justice (DOJ), assists law enforcement agencies and coroners in identifying unidentified deceased persons by comparing their dental charts with the charts of persons reported missing by law enforcement agencies throughout the western United States.

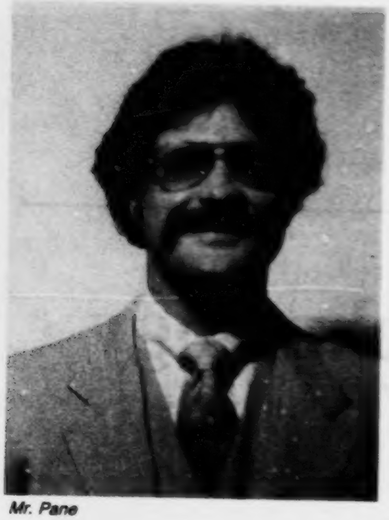
**Case Histories**

On February 25, 1979, the San Diego County Coroner's Office was notified of an unidentified deceased person who was a victim of the "Freeway Killer" in southern California. The dental charts of this homicide victim were submitted to the DOJ dental identification program for comparison against the dental charts of missing persons. The search resulted in a possible match with records of an individual reported missing by the Milpitas Police Department, 450 miles north of San Diego. The deceased person was positively identified by the San Diego County Coroner's Office as the missing person from Milpitas.

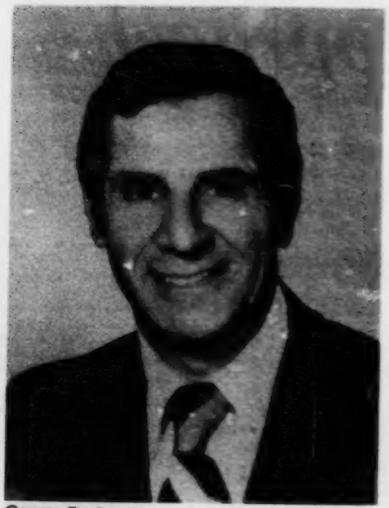
On January 25, 1981, the San Bernardino County Coroner's Office was notified that two human legs had been found. A female torso, with head, legs, and hands severed, was discovered on January 28th, 30 miles from the location of the legs. The hands were not located, but the head was eventually found a month later, 200 feet from where the legs were found. A forensic anthropologist confirmed that all body parts were from the same victim. The dental chart of the victim was submitted to the dental identification program. A search of program files resulted in a probable match with dental records of an individual reported missing by the Santa Ana Police Department in Orange County, which is southwest of San Bernardino County. The deceased person was positively identified by the San Bernardino County Coroner's Office as the missing person from Orange County.

**Program Implementation**

The idea for the California program was initiated by two San Diego dentists, Dr. Norman "Skip" Sperber and Dr. Robert Siegal, who specialize in forensic odontology—the scientific study of teeth. Their enthusiasm resulted in support and passage of legislation which became effective January 1,



*Mr. Pane*



*George Deukmejian*
*California Attorney*
*General*

1979. The law requires local law enforcement agencies and coroners to supply dental records for missing persons and unidentified deceased persons to the California Department of Justice.

In accordance with the new law, the local law enforcement agency completes a DOJ missing persons report and provides the immediate family or next of kin with a DOJ release form requesting that they obtain the missing person's dental records. After conferring with the county coroner about unidentified deceased persons that may be the missing person, the law enforcement agency forwards the DOJ missing persons report and dental records to the dental identification program.

Dental charts of unidentified deceased persons are submitted to the program by county coroners after they have exhausted all attempts to identify the individuals. These dental charts are compiled for the specific purpose of comparison with dental records of missing persons. If a match occurs, the coroner who submitted the dental chart is notified and sent the dental records of the missing person for positive identification.

Prior to implementation of the program, DOJ maintained separate files on missing persons and unidentified deceased persons which contained physical descriptors that were compared for possible matches. However, in many cases, it was difficult to obtain physical descriptors of fingerprints needed for identification because the bodies were badly mutilated or decomposed. With the use of dental charts and records, positive identification is facilitated since most people have had some type of dental work done while there are many people who have not been fingerprinted.

To date, the program has identified 29 unidentified deceased persons. In many cases, unidentified deceased persons were positively identified as missing persons reported by California agencies hundreds of miles away from where the bodies were discovered. A majority of the persons identified—25 of the 29—were victims of homicide. This included homicide victims in Nevada and Arizona who were identified through the program as missing persons from California. This was possible because law enforcement agencies and coroners throughout the western United States may use the program.

Through the program, positive identification was also made for an additional 17 unidentified deceased individuals for whom coroners had possible names. In such cases, the program was able to furnish a missing persons report and dental records to the coroners to assist in establishing the identity of the deceased.

The current file includes dental records of 600 missing persons and 300 unidentified deceased persons. Dental records and charts of missing and unidentified deceased persons are maintained for as long as the submitting agency wishes and are continually compared against incoming reports.

The dental identification program has saved law enforcement agencies and coroners valuable time in their investigations by providing a means to make positive identifications through the use of dental records and charts. Most importantly, however, the program has aided the families of missing and unidentified deceased persons by clearing some of the uncertainties confronting them. **FBI**

# The Use of Video Technology in Shotgun Training

## A Unique Approach

By
DONALD J. GRAY
*Special Agent*
*Firearms Training Unit*
and
CHARLES W. STEINMETZ
*Special Agent*
*National Academy Unit*
*FBI Academy*
*Quantico, Va.*

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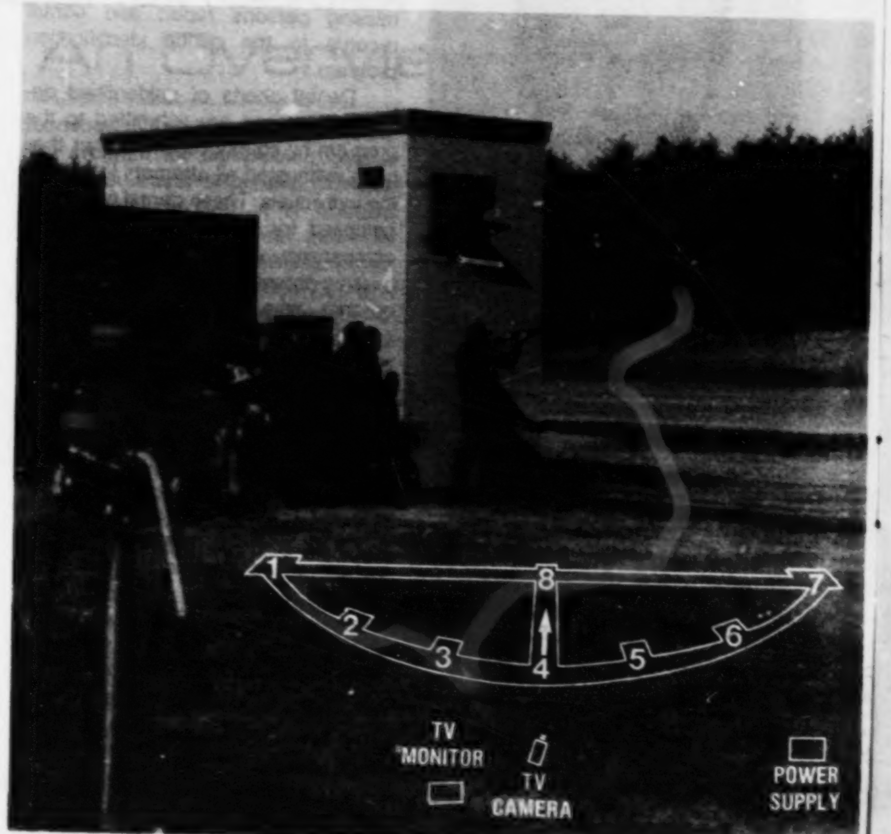

NOISE DANGER
WEAR EAR
PROTECTION

Increased attacks on law enforcement officers in the United States in recent years emphasize the necessity for officers to be alert during all phases of police work. A key weapon in the defensive arsenal of a law enforcement agency is the shotgun, which necessitates a high level of skill in its use. To augment an officer's proficiency with the shotgun, the FBI initiated a "Police Shotgun Training Course," using a combination of video tape technology and student behavior modeling.

The procedure employed in this training is based on behavior-modeling theories. By this it is implied that behavior modeling or observational learning can add totally new behavior to one's repertoire. Wehrenberg and Kuhnie, writing in *Personnel Journal*, urge the use of video tape models for focusing on performance and changing performance.[1] Modeling-based training is also emphasized by Porras and Anderson, who state that the absence of modeling, including the use of video tape techniques, results in training programs that change attitude or persepctive, but fail to change behavior.[2]

The term "self-confrontation," credited to Gerbard Nielsen who described the effects of video tape playback techniques on participants,[3] is critical to the concept of this training process. Self-confrontation is a means of video tape feedback presented to an individual so that he may see and hear his performance as the instructor and colleagues witnessed it when it was delivered.

### Background

The use of video tape recording and playback for training purposes is not a new technique. Researchers in the education field and private industry began to investigate the use of video tape equipment for training and education at the time of its introduction in the 1950's.

In the initial phases, the video medium was unproven for educational purposes, and there were doubts about its reliability. Costs of the intricate systems then available were prohibitive for many organizations, and the systems being developed were not compatible with each other, adding to the complexity of selection.

However, the use of video tape equipment made its way quickly into the institutional spectrum. Certain sectors, such as business and industry, have taken a lead, both in volume of current activity and originality of applications and program formats.[4]

Early use by educators was limited, primarily because video communications consisted of live programing on closed-circuit transmissions. As the development of video tape equipment progressed and the possibilities for programing, storage, and playback were enhanced, those in education were able to upgrade their capabilities. Today, the use of video equipment in the education field is widespread.

Video feedback is viewed as being a reinforcing device for the learner. It has been stated that reinforcement is probably the single most important concept in understanding the learning process. Some researchers see the relationship between feedback and behavior change as a process by which an individual can more effectively use the feedback of information appropriate to his change project, and thereby, be

"'. . . TV applications, [illegible] perfect or not practical, [illegible] today to help [illegible] law enforcement communications problems.'" ■

more successful in attaining his change goal.

Results in experiments with video feedback have produced mixed reactions. The theory that it is a useful device that does improve learning is shared by many who have used the technique; however, specific controlled research does not always support this view. One exception is that of McCroskey and Lashbrook, reporting in the *Speech Teacher*, who conclude that video tape playback of a student's performance, accompanied by instructor and student discussion, can make a positive contribution toward increasing students' insight into the communication process.[5]

In recent years, both small and large police departments who have made extensive use of video equipment report positive behavioral change. The New York City Police Department has used video equipment extensively for inservice training, primarily for the largest segment of the department—the Field Services Bureau. The mobility of video equipment has enabled them to film street scenes, providing greater realism in training.[6] The Greenburgh, N.Y., Police Department discovered that video may not be the least expensive method of training, but it can be extremely valuable in crime scene training, recording voluntary confessions, and surveillance. Unable to question the value of the video method with regard to its ability to transfer knowledge, they concluded it is well worth the expense in an effort to upgrade professional skills through training.[7]

Another law enforcement approach was outlined by Lt. John Fakler of the Suffolk County, N.Y., Police Department, who employed television technology to assist in the control of large-scale demonstrations. Lieutenant Fakler stated that "television played a useful role at this demonstration and it is clear that it would be equally effective at disasters or other unusual disturbances. The equipment to do the job is available, dependable, and not difficult to use. Improved technology has also lowered the price for equipment that was once too expensive to consider."[8] Lieutenant Fakler's summary of the situation is quite explicit: "Television technology has advanced considerably during the past 5 years, and TV applications, once thought to be imperfect or not practical, are possible today to help resolve law enforcement communications problems."[9]

## The Police Shotgun Training Course—Pilot Program

The Police Shotgun Training Course (PSTC) is an elective taken by students enrolled in the FBI National Academy. Students' abilities in the use of the shotgun range from highly competitive skeet shooters to those who are novices.

When a pilot program using video tape recording equipment in shotgun training was initially attempted, the PSTC consisted of five 2-hour sessions. Although the use of video gave the students an opportunity for self-confrontation, several problems developed. Since the video tape recording equipment had to be obtained from the Academy's Instructional Technology Services Unit, excessive instructor preparation time was necessary. In addition, a video technician was used to tape each session, since the instructors were fully engaged in the training process. As a result, the maximum training benefits were not achieved, since the technician lacked an adequate background in firearms training.

In order to insure that each of the 15 students were video taped during the 2-hour class period, very short segments of each individual's performance were taped. These segments appeared in random order so that the flow of instruction taking place on four separate skeet fields was not interrupted. The time constraints made it impossible for each student to view the video tape immediately, thereby reducing the effectiveness of this method of training. And the random sequencing on the field made it difficult to locate a particular student during playback, which was extremely time-consuming for both student and instructor.

The difficulties encountered in the pilot program alerted the staff to the fact that a concentrated effort must be applied if there were to be effective results.

## Current Design of the PSTC

Student evaluations revealed that a majority of police departments offered insufficient training with the shotgun, which suggested that additional time should be allocated to enable the students to further develop their shotgun techniques and skills while attending the FBI Academy.

Currently, the PSTC elective is divided into 10 2-hour blocks of instruction, with each class of students divided into groups of 5. The first session consists of a lecture/discussion dealing with the application of the shotgun in police work. The second includes a demonstration by the instructor and practical application by students of safety checks, assemble area loading, unloading, and combat loading with dummy ammunition, with an instructor's critique of the procedures. The third session begins with live firing and the use of stationary targets to practice the fundamentals and techniques previously presented.

**"As proficiency with the shotgun increases, law enforcement officers are better able to defend themselves and those they are sworn to protect."**

Sessions four and five consist of the FBI's shotgun course #2 (skeet), while sessions six and seven are the FBI's shotgun course #8 (combat skeet). Both shotgun courses are used to develop the student's mastery of the operation and function of the police shotgun without consciously thinking about this process and to develop the concept of "lead" as it pertains to hitting moving targets. It is during sessions four through seven that each student is video taped and given time for self-confrontation immediately afterwards.

### Methodology

Although the positions and number of shots used in shotgun course #2 are applicable to standard American skeet shooting, one major variation is used by the FBI. The student is required to start with the weapon below shoulder with the safety in the "on" position until the target (bird) is called. This ready-gun position invariably becomes an international skeet shooting position, wherein a portion of the weapon stock is below the lateral line of the forearms.

It should be remembered that the use of skeet for law enforcement training by the FBI is not an attempt to teach competitive shooting methods, but to prepare the student for the defensive use of the weapon. To continually allow a shooter to bring the shotgun to the shoulder and have the safety in the "off" position prior to initiating a timed shooting phase is analogous to never drawing from the holster when training with the handgun. Statistical surveys of gun battles show very few instances where the officer has the opportunity to cover an opponent with the weapon prior to using deadly force.[10]

By using the FBI's ready-gun position, the student must act upon a self-initiated, internal command (calling the target) or react to external stimuli (trap machine noise or the target exiting the house). If an internal command is employed by the shooter to initiate action (gun movement), the target will reach midpoint of the field approximately 1.5 seconds after the signal to release the bird has been given. It will reach the front lateral edge of the opposite house in about 3 seconds. When external stimuli are used, as particularly necessary in the combat skeet course, the target will reach the field midpoint in about 1 second and the opposite house 2.5 seconds after the trap noise or the target exiting the chute. Either method sufficiently reduces the time available to the shooter, which requires a reaction in place of a deliberate action as is usually possible in most shotgun training or qualification courses. By necessitating a reaction, i.e., mounting the weapon to the shoulder, placing the safety in the "off" position, tracking the target, establishing lead, and firing the shot, most shooters cannot simultaneously perceive their personal conditioned reaction in the attempt to break the target. In other words, the shooter normally is unable to recall action, such as how the weapon was mounted to the shoulder, head position, or continuation of swing. The instructor can advise the students of these actions, particularly those that are incorrect techniques. However, as in any verbal communication, visualization of the problem is difficult. At this point, the use of video tape recording enhances the development of proper techniques. The students themselves, through course critiques and comments, expressed increased enthusiasm for and awareness of the development of proper shooting techniques.

It was clearly demonstrated that behavior change of a position nature was achieved using instructor model-based training, in conjunction with immediate review of video taped student performance.

### Equipment

A Remington Model 870, the standard-issued shotgun for all FBI field offices and many law enforcement agencies, is used during the training. The video recording equipment includes a Sony AVC 3200 black-and-white camera with a Fujinon 12.5 100mm. zoom lens, a Sony AV 3600 solid-state recorder with ½-inch reel-to-reel tape, and a Sony 19-inch television monitor for playback. A 100mm. zoom lens allows the instructor to position all the video equipment at a fixed location. The location of the camera behind station four enables taping of the entire field with minimum camera adjustments.

In 1982, this equipment is not considered "state-of-the-art," but is available through the Instructional Technology Services Unit for full-time assignment to the firearms range and proves to be both reliable and durable. The equipment used originally did not have sound capability, although it was adequate. However, the addition of sound equipment enhanced the realism of the self-evaluation by the student.

The recorder, monitor, and related equipment is on a mobile cart, while the camera is on a wheeled tripod. Both units can be moved easily to any location on the range complex.

### Recommendations

For agencies that may wish to incorporate the use of video tape equipment into their firearms training programs, the following is recommended:

1) A total shotgun training period of 20 to 25 hours is desirable to accommodate video tape playback to provide immediate self-confrontation and reinforcement for the student. The additional time is required if students are to maintain the same level of skill practice on techniques as were present prior to the incorporation of video equipment. The results of this combination is a higher level of student proficiency than would otherwise be achieved.
2) A minimum amount of time should be allowed to expire between actual firing, self-confrontation, and return to firing (reinforcement). This enhances the skill learning process.
3) A stationary video taping position is necessary for the TV camera, recorder, and monitor which can then be adequately handled by a single instructor performing both cameraman and instructor duties.
4) When training is conducted on more than one field, within a limited time span, and with only a single video unit, consideration should be given to using a cameraman or technician with a firearms training background, enabling the principal shotgun instructor to have more time for training.
5) If available, the use of more than one video camera and cassette recorder being employed simultaneously on various ranges would accommodate more students. The playback equipment with an additional instructor should be centrally located for use by all groups on a rotating basis.
6) Training groups on each skeet field should be limited to five students, with a separate instructor for each group.

### Summary

While the full potential of video tape technology has not been reached, advantages accrue for the law enforcement agency that wishes to train shotgun marksmen in a proficient and economical manner. The use of video tape recording equipment to complement a shotgun training course is a cost-effective and efficient method. Cooperative and imaginative efforts on the part of the law enforcement agency will enable a student to make judgments about the effectiveness of the video tape procedure as it applies to the unique law enforcement student. The results are likely to have impact on instructional procedures and could enhance the quality of training a law enforcement student receives.

Proficiency in any skill activity is dependent on the degree to which the student masters the basic techniques. Through the use of video taping and subsequent self-analysis, students are able to visualize defects in their own personal basic shotgun techniques. Once defects are identified, corrective action to change adverse activity and increase overall proficiency is accelerated. As proficiency with the shotgun increases, law enforcement officers are better able to defend themselves and those they are sworn to protect.

**FBI**

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**Footnotes**

[1] Stephen Wehrenburg and Robert Kuhnie, "How Training Through Behavior Modeling Works," *Personnel Journal*, vol. 7, July 1980, pp. 76–81.

[2] Jerry I. Porras and Brad Anderson, "Improving Managerial Effectiveness Through Modeling-Based Training," *Organizational Dynamics*, Spring 1981, pp. 60–77.

[3] John H. Barwick and Steward Kranz, *Profiles in Video* (White Plains, N.Y.: Knowledge Industry Publications, Inc., 1975), p. 2.

[4] Harry P. Baker, "Film and Videotape Feedback: A Review of the Literature," Austin University of Texas Research and Development Center for Teacher Education, November 1970, p. 2.

[5] James C. McCroskey and W.B. Lashbrook, "The Effect of Various Methods of Employing Video-taped Television Playback in a Course in Public Speaking," *The Speech Teacher*, vol. 19, September 1970, p. 205.

[6] Thomas M. Lawlor, "Video Tape: A Viable Training Medium," *FBI Law Enforcement Bulletin*, vol. 45, No. 9, September 1976.

[7] William B. McDonald, "The Use of Video Tape in Law Enforcement Training," *FBI Law Enforcement Bulletin*, vol. 49, No. 12, December 1980.

[8] John Fakler, "Television: A Versatile Tool at Large Demonstrations," *FBI Law Enforcement Bulletin*, vol. 48, No. 12, December 1979.

[9] Ibid.

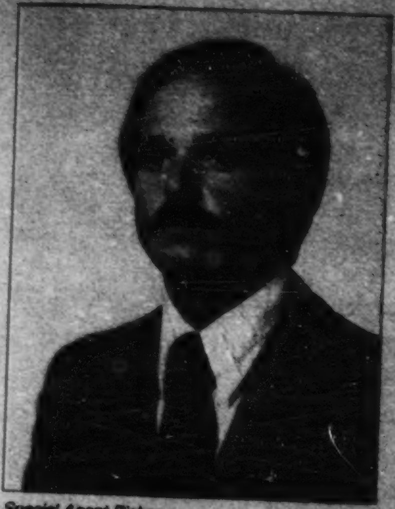
[10] "Survey of Gunbattles Involving FBI National Academy Attendees," Firearms Training Unit, FBI Academy, Quantico, Va., 1982.

# MISSING

Judy Mann
1.3 Million Children Vanish Every Year
missing after tornado
Finding Missing Children

By
DEMERY R. BISHOP
*Special Agent*
and
TIMOTHY J. SCHUESSLER
*Program Analyst*
*Federal Bureau of Investigation*
*National Crime Information Center*
*Washington, D.C.*

# The National Crime Information Center's Missing Person File



*Special Agent Bishop*

*Mr. Schuessler*

"There is a distinct need for a national system to help in locating missing persons." This statement has recently been heard in the Nation as a plea from some sectors of the public seeking law enforcement action, although the criminal justice community has long recognized the need for a centralized computerized system for aiding and locating missing persons. At a February 1974, meeting, the National Crime Information Center (NCIC) Advisory Policy Board approved the establishment of a Missing Person File. This file was added to the nationwide NCIC system on October 1, 1975. The Missing Person File provides law enforcement agencies with the capability of entering missing person records into the FBI's NCIC computer and inquiring against this file with instantaneous response.

### The File

In order to use the Missing Person File to its maximum potential, all law enforcement personnel should be aware of its existence and the criteria for entering a missing person record into NCIC. The file is composed of four categories of records. These categories and the criteria for entry in each are as follows:

1) Disability—A person of any age who is missing and under proven physical and/or mental disability or is senile, thereby subjecting himself or others to personal and immediate danger.
2) Endangered—A person of any age who is missing and is in the company of another person under circumstances indicating that his physical safety is in danger.
3) Involuntary—A person of any age who is missing under circumstances indicating that the disappearance was not voluntary, i.e., abduction or kidnaping.
4) Juvenile—A person who is missing and declared unemancipated as defined by the laws of his State of residence and who does not meet the entry criteria of the other three categories.

A record may be entered in the Missing Person File if the entering agency has documentation supporting the stated conditions under which the person is declared missing. Examples of acceptable documentation are a written statement from a parent or legal guardian confirming that the person is missing and verifying his date of birth, a written statement from a physician or other authoritative source corroborating the missing person's physical and/or mental disability, or a written statement from a parent, legal guardian, family member, or other authoritative source advising that the missing person is in the company of another person under circumstances indicating that his physical safety is in danger or that the missing person's disappearance was not voluntary. A missing person report filed with a police agency is sufficient documentation for entering a juvenile in category No. 4. Although some departmental rules establish time delays in entering individuals' records into the Missing Person File, there is no mandatory system requirement for delayed entry, i.e., 24-hour time lapse from disappearance to entry.

A record entered in the disability, endangered, or involuntary category is retained in the file indefinitely until a locate is placed on the record or action is taken by the entering agency to delete the record. A record entered in

**"The Missing Person File provides law enforcement agencies with the capability of entering missing person records into the FBI's NCIC computer and inquiring against this file with instantaneous response."**

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the juvenile category is retained until the person is no longer a juvenile as defined by the statutes of his State.

The Missing Person File is designed to permit entry of descriptive information and unique numeric identifiers. The record specifically differentiates the individual as a missing person and not a person for whom an arrest warrant is outstanding.

### Off-Line Search Capability

In addition to online searches of the NCIC computer by criminal justice agencies with NCIC terminals, special off-line computer searches not possible with a terminal may be conducted for all NCIC files by contacting the FBI's NCIC staff. As online searches of timely and accurate information can increase the probability of wanted person apprehension and stolen property recovery, these searches can also facilitate locating a missing person or identifying a dead body. NCIC off-line search possibilities are infinite. Searches can be limited to a certain time frame, i.e., a particular year, day, or hour, and to the records and/or transactions of a particular State or city. An NCIC off-line search can be made with a minimum of one search parameter; however, searches including all available information will be more effective. Searches can be made on common personal descriptors, such as sex, height, weight, estimated age, scars, marks and hair coloring, to assist in identifying a missing or deceased person.

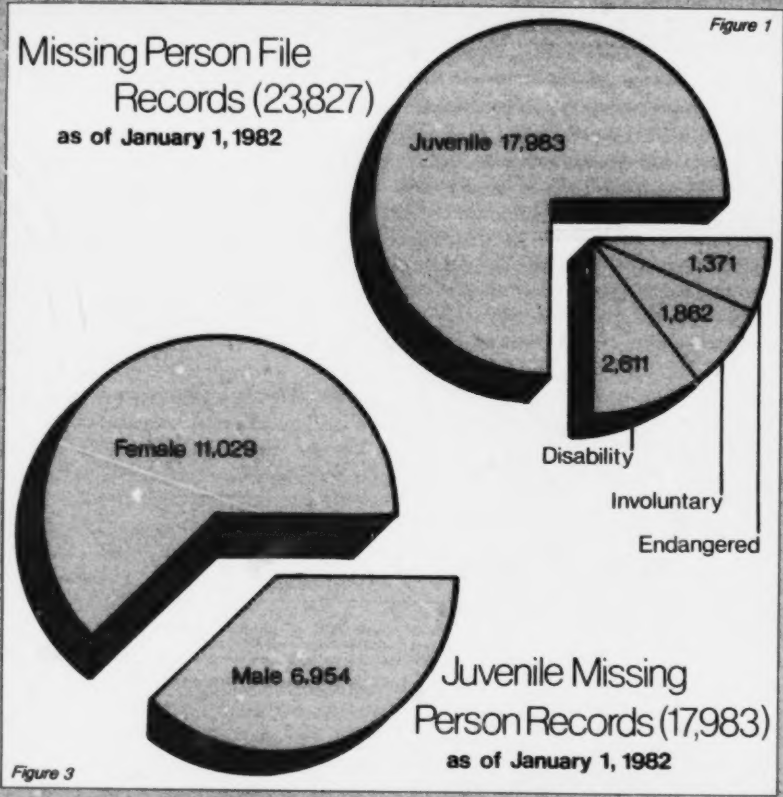


*Figure 1*

Missing Person File Records (23,827)
**as of January 1, 1982**

*Figure 3*

Juvenile Missing Person Records (17,983)
**as of January 1, 1982**

### Unidentified Dead File Pilot Project

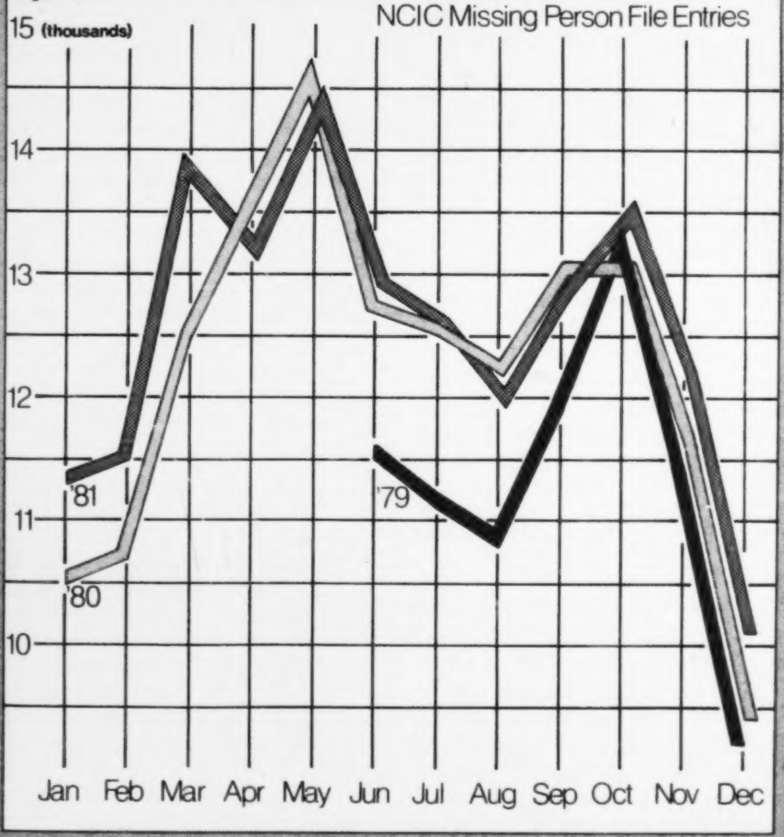
As an additional investigative tool, the NCIC Advisory Policy Board approved the establishment of a nationwide unidentified dead file pilot project. The Colorado Bureau of Investigation (CBI) Unknown Dead File is currently available to all criminal justice agencies for a test period of 2 years. The pilot will determine whether there is a need to establish an unidentified dead file on a national basis, whether a file of this type could be automated, and what type of information should be included to best serve the user.

An authorized agency seeking to identify a recovered body is required to transmit a form describing the remains to the CBI via the National Law Enforcement Telecommunications System, Inc. (NLETS) or by simply sending the form through the mail. The CBI Identification Unit files the report after computerizing the identification information shown on the form.

An investigator working on a missing person case may check the Unidentified Dead File by providing available identification data. Prompt response is provided during normal business hours, giving the inquirer any possible lead information, such as who has a body fitting the description of the missing person.

Once an identification is made, the originating agency requests the CBI to destroy the index record in the Unidentified Dead File. This file does not contain complete investigative reports, photographs, x-rays, or locations of the remains. The information contained in the file serves as an index to establish contact between agencies seeking to locate missing persons and identify deceased persons whose bodies have been located. The file's value is dependent on its completeness, nationwide entry of records, and active use by investigators.

*Figure 2*


NCIC Missing Person File Entries

## Public Concern

Various major metropolitan cities have a large volume of missing person cases reported annually. There are 30,000 reported missing person cases,[1] 50,000 parentally abducted children,[2] and 1 million runaways,[3] annually. During some of the recent major cases—the Gacy murders in Chicago, the Atlanta kidnapings, the missing Patz child in New York, and the Walsh abduction in Florida—there was considerable media coverage indicating that police agencies were not coordinating their efforts in locating missing persons and that a nationwide missing person system was virtually nonexistent. This type of public awareness should encourage all law enforcement agencies to ensure the use of the Missing Person File.

In using the Missing Person File, it is important that:

1) The missing person report be filed and additional documentation, if required, be furnished;
2) The information be entered into the system on a timely basis; and
3) The record be removed when the individual is located.

A statistical analysis of the Missing Person File was recently conducted to determine the degree of its use by law enforcement agencies. Between October 1975, and January 1982, 791,403 records were entered in the NCIC Missing Person File, an average of 10,552 entries per month. Recent analyses have shown that an average of 76 percent of the records in file are in the juvenile category. It is estimated that 601,466 records have been entered for missing juveniles since the file became operational in 1975. This would be an average of 8,020 juvenile-category entries per month.

As of January 1, 1982, there were 23,827 records in the NCIC Missing Person File. Of these records, 17,993 were in the juvenile category, 1,371 were in the endangered category, 1,852 were in the involuntary category, and 2,611 were in the disability catego-

**"Use of the NCIC Missing Person and Unidentified Dead Files can result in significant humanitarian service and criminal justice accomplishments."**

ry. (See fig. 1.) Review of monthly entries for 1980 and 1981 shows that the yearly high for both years was in the month of May, with 14,646 entries in 1980 and 14,357 entries in 1981. The month in which the least number of entries were made was December for both years, with 9,366 entries in 1980 and 10,088 entries in 1981. Figure 2 shows monthly entries from June 1979, through December 1981.

## Juvenile Category Statistics

Of the 17,983 missing juvenile entries, 61.3 percent were entered for females and 38.7 percent were entered for males. Missing males outnumbered missing females for most ages through age 12. Missing females substantially outnumbered missing males between 13 and 19 years of age. Missing persons 10 years old and younger represent only 3.2 percent of the records; persons 11, 12, and 13 years old represent 10.1 percent of the records; persons 14, 15, 16, and 17 years old represent 85.4 percent of the records; and persons 19 years old and older represent 1.2 percent of the records. Percentages do not total 100 percent because of rounding.

Of the missing juveniles, whites comprised 82 percent of the records followed by blacks with 16.4 percent of the records. The majority of the entries—51.1 percent—are for white females. White males comprise 30.9 percent of the records, black females comprise 9.3 percent of the records, and black males comprise 7.1 percent of the records. (See fig. 3.) These figures are constant during the course of the year, with juvenile entries constituting the majority of records on file. If the estimates indicating that there are over 1 million runaways annually are correct, a total of approximately 114,000 juvenile records entered into the Missing Person File per year would indicate that the full potential of the file is not being utilized.

*Figure 3*

**Juvenile Missing Person Records**

| Race | Females | Percent of Total Records | Males | Percent of Total Records | Total | Percent of Total Records |
|---|---|---|---|---|---|---|
| American Indian or Alaskan Native | 86 | .5 | 67 | .4 | 153 | .9 |
| Asian or Pacific Islander | 16 | .1 | 16 | .1 | 32 | 2 |
| Black | 1,671 | 9.3 | 1,284 | 7.1 | 2,955 | 16.4 |
| White | 9,191 | 51.1 | 5,548 | 30.9 | 14,739 | 82.0 |
| Unknown | 65 | .4 | 39 | .2 | 104 | .6 |
| Total | 11,029 |  | 6,954 |  | 17,983 |  |

## Successful Utilization

A recent successful use of the file highlights its potential. An individual, Tom J.,* lost his memory. He only knew his name as a result of a document which he had in his possession. After 2 years of attempting to discover his past, with negative results, Tom J. began a new life. He married and found employment. One day, Tom J. was stopped by a police officer for a traffic violation. The officer made an inquiry on him, via NCIC. The inquiry resulted in a "hit"—Missing Person—Endangered, entered by a Florida agency. Tom J. was brought to the police station and contact was established with his parents. After verifications, Tom was reunited with his parents.

Use of the NCIC Missing Person and Unidentified Dead Files can result in significant humanitarian service and criminal justice accomplishments. It is yet another tool for the law enforcement officer to use in order to better serve the public. **FBI**

**Fictitious—Summary of facts taken with permission from American Broadcasting Corporation program, 4-6-81, "That's Incredible."*

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**Footnotes**

[1] Ingrid Groller, "Where are They?" *Parent's Magazine*, April 1981, p. 70.

[2] "Up Front," *People Magazine*, October 5, 1981, p. 30.

[3] *New York Times*, June 22, 1980, Section 11, p. 8.

# REASONABLE EXPECTATION OF PRIVACY, THE EMPLOYEE-INFORMANT, AND DOCUMENT SEIZURES

## (Part I)

By
MICHAEL CALLAHAN
*Special Agent*
*Legal Counsel Division*
*FBI Academy*
*Federal Bureau of Investigation*
*Quantico, Va.*

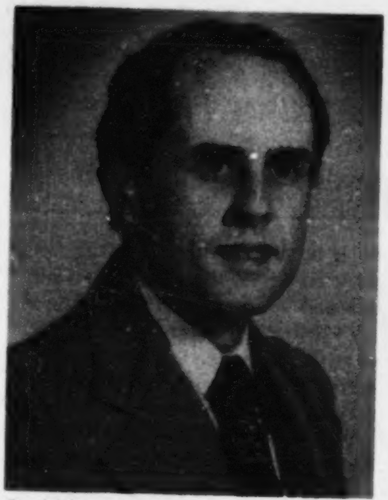
*Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.*

"A" is the owner of a small construction business which has recently been awarded several government contracts. "B" is his secretary and bookkeeper, and her responsibilities include access to and control over company records. The records are kept in a locked safe in B's office, and both A and B have keys to the safe. B suspects that A is bribing public officials to obtain government contracts, and her suspicions are enhanced by certain records that she has handled in the course of her daily duties. B reports her suspicions to a law enforcement agency having jurisdiction over this type of offense. She informs an officer that certain records maintained at the business premises support her belief that A is violating the law. The officer tells her to return to the business, obtain the questionable records, and bring them to the police station for his review. B returns to the business during normal working hours and takes the suspicious files out to her car for delivery that evening to the officer. Does B's conduct constitute a search under the fourth amendment to the U.S. Constitution,[1] and if so, is such a search reasonable? These questions can only be answered by an analysis and application of the "reasonable expectation of privacy" doctrine, which was announced by the Supreme Court in the late 1960's, and of recent Federal court decisions interpreting the fourth amendment. This article discusses some of the important issues raised by the hypothetical case described above and reviews those decisions which offer some answers.

### Reasonable Expectation of Privacy Standard—Origin and Development

The reasonable expectation of privacy concept has its roots in the U.S. Supreme Court's decision in *Katz* v. *United States*.[2] FBI Agents monitored incriminating gambling conversations of Katz by the warrantless use of a microphone on top of a public telephone booth used by Katz. Katz was convicted of Federal gambling violations and his conviction was affirmed by a Federal appellate court. The Supreme Court reversed, and in so doing, focused upon the question of whether the warrantless microphone surveillance constituted a search under the fourth amendment. The Court observed that Katz made an effort to preserve the privacy of his conversations by closing the door to the phone booth and concluded that the FBI's conduct violated the defendant's privacy expectation, upon which he justifiably relied. The Court concluded that such conduct amounted to a search which, in the absence of a warrant, was unreasonable under the fourth amendment.

A few years later, in *United States* v. *Miller*,[3] the Court applied the *Katz* formulation in a case in which Miller's bank was served with a defective grand jury subpena which called for the bank to produce copies of his checks, deposit slips, and financial statements. These records were admitted into evidence at his tax fraud trial, and he was convicted. A Federal appellate court reversed, holding that the fourth amendment was violated when the bank records were obtained pursuant to a defective subpena. The Supreme Court, however, set aside the appellate decision and held that Miller had no protectable fourth amendment interest in the incriminating records. Since the fourth amendment was not implicated, the validity of the subpena was immaterial. Miller argued that he had a reasonable expectation of privacy in the records, since they were copies of personal records furnished to the bank for a limited purpose. The Court rejected this claim and said that its decision would have been the same even if Miller's original records were involved



*Special Agent Callahan*

instead of copies. The Court reasoned that Miller had no justifiable expectation of privacy in records which he voluntarily exposed to his bank. Further, he assumed the risk in revealing his private affairs in this manner that the bank might convey the information to the government. The Court noted:

> ". . . the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, *even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed.*"[4] (emphasis added)

A 1978 Federal appellate decision applied the *Katz* reasonable expectation of privacy rationale in a tax evasion case. In *United States* v. *Choate*,[5] the Court found that Choate, the addressee, had no justifiable expectation of privacy in information appearing on the face of mail addressed to him. The court held that the mail cover used in the investigation was valid, notwithstanding the absence of a warrant, because the sender of the mail knowingly exposed the outside of the letters to postal employees and others.

A more recent application of the privacy concept occurred in the Supreme Court's 1979 decision in *Smith* v. *Maryland*.[6] In *Smith*, local officers had reason to believe that the defendant was making threatening and obscene telephone calls to the victim. Without a warrant, they placed a device on the suspect's phone line designed to monitor numbers dialed from his telephone. The installation occurred at the central office of the telephone company. The device disclosed a call placed on the suspect's phone to the victim's home. Based in part on this fact, police obtained a search warrant for the suspect's home. The subsequent search revealed incriminating evidence. Smith was convicted, and his appeal was denied by the Court of Appeals of Maryland. Smith argued before the U.S. Supreme Court that he had a reasonable expectation of privacy in the numbers he dialed on his home phone, and therefore, when police obtained those numbers without a warrant, an unreasonable search occurred. The Court rejected this contention and held that Smith had no reasonable expectation of privacy in these circumstances. The Court observed:

> "When he used his phone petitioner voluntarily conveyed numerical information to the telephone company and 'exposed' that information to its equipment. . . . In so doing, petitioner assumed the risk that the company would reveal to police the numbers he dialed."[7]

Since Smith had no reasonable expectation of privacy, the fourth amendment was inapplicable, and the use of the monitoring device did not constitute a search.

The foregoing cases stand for the proposition that when an individual chooses to reveal his private affairs voluntarily to third parties, whether that revelation be in the form of written records, mail, or telephone numbers dialed, the person has no reasonable expectation of privacy in that which he voluntarily exposes. In such circumstances, the individual is held to have assumed the risk that the party to whom such voluntary revelations are made might turn the information over to the police. If no reasonable expectation of privacy is intruded upon, no search takes place, and the fourth amendment is inapplicable. Applying this reasoning to the hypothetical case described above, it can be argued that when A voluntarily exposes criminal wrongdoing to B in the form of records to which she has access and over which she has control, he has no expectation of privacy with respect to B in those records.

## Privacy and the Employer-Employee Relationship

In the hypothetical case, if the police were to appear at A's business office to conduct a warrantless search for records, such conduct would likely be viewed by the courts as an unwarranted intrusion into A's reasonable expectation of privacy. *Mancusi* v. *DeForte*[8] illustrates the point. In *DeForte*, State officers conducted a warrantless search of a room in a union hall that the defendant union official shared with other union officers. They seized union records which incriminated DeForte. The Supreme Court reversed his State conviction, holding that he had a reasonable expectation of privacy in the room he used with other union officers. This reasonable privacy expectation was unreasonably invaded by the warrantless action of the police. However, in reversing DeForte's conviction, the Court observed:

> ". . . DeForte shared an office with other union officers. DeForte still *could reasonably have expected that only those persons* . . . would enter the office and that records would not be touched except with their permission . . . ."[9] (emphasis added)

An inference can be drawn here that although DeForte had a reasonable expectation of privacy in the union office vis-a-vis outside governmental intrusion, such did not exist with respect to other union officials with whom he shared the office space. The existence of such a distinction finds further support in a recent U.S. Supreme Court decision in *Marshal* v. *Barlow's, Inc.*[10] In *Marshal*, an inspector representing the U.S. Department of Labor appeared at the business premises of Barlow to conduct a safety inspection pursuant to Federal statute. Barlow determined that the inspector had no warrant and refused to allow the inspection. A court order was obtained authorizing the inspection. Barlow again refused admission and sought injunctive relief. A three-judge district court ruled in Barlow's favor and issued an injunction which barred the Government from conducting a warrantless search of the business. The Secretary of Labor appealed, and the Supreme Court held the Federal statute unconstitutional insofar as it purported to authorize warrantless safety inspections of covered businesses. The Court rejected the Government's claim that since Barlow had exposed safety violations to the observation of his employees in the nonpublic area of the business space, he forfeited as well his expectation of privacy regarding warrantless safety inspections. The court explained that things which employees observe in their daily functions are beyond the employer's reasonable expectation of privacy. However, the Court distinguished Government inspectors from employees as follows:

> "The government inspector, however, is not an employee. Without a warrant he stands in no better position than a member of the public. . . . The owner of a business has not, by the necessary utilization of employees in his operation, thrown open the areas where employees alone are permitted to the warrantless scrutiny of government agents."[11]

In 1979, the Third Circuit Court of Appeals decided *In the Matter of Grand Jury Empanelled February 14, 1978.*[12] In this case, the Government served a subpena duces tecum upon the office manager of Dominick Colucci's construction company (a sole proprietorship) for the business records of the company. The U.S. district court quashed the subpena, holding that the fifth amendment shielded Colucci from the compelled disclosure of his business records. The Government appealed, claiming that Colucci was not compelled to provide testimonial evidence against himself since the subpena for the records was directed to the office manager and not Colucci. Colucci countered that argument by claiming that as the office manager's employer, he had constructive possession of the disputed records. The court of appeals rejected this argument and noted that the office manager's duties involved the preparation, custody, and use of these documents. The court added:

**". . . the Government cannot insulate itself from the operation of the fourth amendment by recruiting an informant to do that which would violate a citizen's justifiable expectation of privacy if done by the police directly."**

> "At the least, it can be said that Colucci had no expectation of privacy vis-a-vis DeMato (office manager) an individual who was under no enforceable obligation of confidentiality."[13]

The court held that this absence of an expectation of privacy precluded a conclusion that Colucci had constructive possession of the records. The district court's order quashing the subpena was reversed. While the court's decision was grounded on the fifth amendment, it sheds light on the meaning of the privacy concept growing out of the fourth amendment.

The above-described decisions support the view that an employer has a reasonable expectation of privacy in his business affairs sufficient to protect his records against direct, warrantless seizure by police. However, he may have no such expectation in business records where he has voluntarily relinquished access and control over them to an employee.

### Privacy and Informant Seizures—General Rule

It is a well-established principle of law that the Government cannot insulate itself from the operation of the fourth amendment by recruiting an informant to do that which would violate a citizen's justifiable expectation of privacy if done by the police directly.[14]

The principle was established in *Gouled* v. *United States*,[15] a 1918 Supreme Court decision in which a business acquaintance of the defendant, on behalf of and under direction of the Federal Government, seized without warrant certain documentary evidence from the defendant's office while there on a friendly visit. The Court reversed a conviction based on the use of this evidence.

The issue was whether the secret taking of evidentiary papers from a suspect's business office by a Government agent lawfully present offended the fourth amendment. The Court held that the fourth amendment prohibition against unreasonable searches and seizures operates to bar evidence taken by a governmental agent who gains entry to a suspect's home or office by stealth, social acquaintance, or under guise of a business call, and who thereafter secretly seizes the incriminating materials, whether the suspect is present or not. Subsequent decisions have engrafted exceptions onto the basic rule.

### Exceptions to General Rule Privacy and Nonemployee Informant Seizures

It is now a settled principle of fourth amendment law that when a criminal suspect voluntarily invites a police informant into an area where he reasonably expects privacy and chooses to expose criminal conduct to the informant, the suspect gives up any reasonable privacy expectation by misplacing his trust in the informant. The suspect is held to have assumed the risk that the person with whom he is dealing might be an informant or police agent. Support for this principle can be found in *Hoffa* v. *United States*.[16]

Hoffa, a well-known labor official, was awaiting trial after being indicted for alleged criminal violations of the Taft-Hartley Act. The Government suspected that Hoffa would attempt to tamper with the jury at his upcoming trial. Partin, a labor official and friend of Hoffa, agreed to assist the Government in substantiating its belief that Hoffa would attempt to improperly influence the jury. At Hoffa's invitation, Partin was present in Hoffa's hotel suite on several occasions during his Taft-Hartley trial. While there, he was privy to or overheard several incriminating conversations engaged in by Hoffa and others regarding a plot to bribe jurors. Hoffa was ultimately convicted of obstruction of justice, based in part upon testimony furnished by Partin regarding the above conversations. The conviction was affirmed by a Federal appellate court and the Supreme Court accepted the case for review. Hoffa argued that the informant's presence in his hotel suite violated the fourth amendment, in that his failure to disclose his role as a Government operative vitiated the consent to enter, and that by listening to Hoffa's conversations, the informant conducted an illegal search for verbal evidence. The Court, although not specifically using the reasonable expectation of privacy terminology (*Hoffa* predated *Katz* by 1 year), rejected Hoffa's claim. The Court held that when Hoffa invited the informant into his private premises and voluntarily exposed planned wrongdoing, he relied not on the security of the hotel room but rather upon his misplaced confidence in the informant. The Court observed that when Hoffa misplaced his trust in the informant, he necessarily assumed the risk that this trust might be betrayed, that the informant might reveal his words to the Government and ultimately testify against him in a criminal trial.

The Supreme Court's 1971 decision in *United States* v. *White*[17] marked the convergence of the principles of reasonable expectation of privacy and misplaced confidence—assumption of the risk. In *White*, a Government informant was fitted with a radio transmitter which operated to allow law enforcement officers to monitor an incriminating conversation that White had with the informant in White's home. At White's Federal narcotics trial, the monitoring officers testified to what they overheard, and White was convicted. A Federal appellate court reversed the conviction, holding that such warrantless monitoring violated the defendant's reasonable expectation of privacy as explicated in *Katz*. The Supreme Court reversed and observed that the *Katz* decision did not in any way disturb or negate its decision in *Hoffa*. The Court used language which is significant in support of the idea that the principles of reasonable expectation of privacy and misplaced confidence—assumption of the risk—were joined in the *White* decision. The Court stated:

> "If the conduct and revelations of an agent operating without electronic equipment do not invade the defendant's *constitutionally justifiable expectations of privacy*, neither does a simultaneous recording of the same conversations made by the agent or by others from transmissions received from the agent to whom the defendant is talking and *whose trustworthiness* the defendant *necessarily risks*." [18] (emphasis added)

A similar result was reached in *United States* v. *Coven*.[19] A business associate of the defendant agreed to plead guilty to one count of mail fraud and to cooperate with the Government in its investigation regarding Coven and others. Wilt, the cooperating business associate, was invited into the private offices of the defendant and surreptitiously recorded conversations of the defendant. The conversations were conducted in Wilt's presence, although he was not a party to them. Additionally, while in the private office of the defendant, Wilt read into a tape recorder the contents of documents which were furnished to him by Coven. The defendant was convicted of wire and mail fraud, based in part upon evidence gleaned from the efforts of Wilt on behalf of the Government. On appeal, the appellate court rejected Coven's fourth amendment arguments, holding that he had no reasonable expectation of privacy in a conversation conducted in the presence of a third party who was lawfully present, even when the third party was not a party to the conversation. Furthermore, the court found no expectation of privacy regarding Wilt's reading into a tape recorder the contents of documents given to him by Coven. The court reasoned that since Wilt could have testified to the contents of the documents, he could read their contents into a recorder without violating the fourth amendment. Thus, a person has no reasonable expectation of privacy in wrongdoing which he voluntarily reveals to a third party. If the third party turns out to be a Government agent, the wrongdoer is held to have misplaced his trust in the third party and to have assumed the risk that the third party might deceive him. In such circumstances, the fourth amendment is inapplicable and no search takes place.

In the hypothetical case, A (the employer) voluntarily exposed to B, his employee, evidence of criminal wrongdoing in the form of written records. B was given access and control over those records by A. Many similarities exist between the facts of the hypothetical and those of cases like *Hoffa*, *White*, and *Coven*. In all of the cases, including the hypothetical, the informant is lawfully present. Likewise, in all, the defendant voluntarily exposes to the informant, or in his presence, incriminating evidence. In *Coven*, part of the incriminating evidence involved written material, the contents of which were read into a tape recorder by the informant. The legal principles found in cases like *Hoffa* and *White*, when considered in light of the similarities noted above, suggest that A, with respect to B, has no reasonable expectation of privacy in the incriminating records. Thus, there is no search when B turns over to the police records which she has access to and control over by virtue of her employment status. The fourth amendment seems inapplicable to the hypothetical case.

The only apparent factual distinctions between cases like *Hoffa* and the hypothetical are that in the latter, the informant is an employee and the evidence is contained in records which are physically taken. The remaining question is whether these factual differences are distinctions of constitutional dimension.

## Privacy and Employee-Informant Seizures

In *United States* v. *Billingsley*,[20] one Gander, the secretary-treasurer of a corporation, removed incriminating documents from the corporate president's office without his knowledge. These records were turned over to the Government and admitted into evidence against several individuals on trial for mail fraud. The corporate president, from whose office the records were removed, and other defendants were convicted. Prior to the secretary-treasurer's removal of the documents, he

**". . . when a criminal suspect voluntarily invites a police informant into an area where he reasonably expects privacy and chooses to expose criminal conduct to the informant, the suspect gives up any reasonable privacy expectation. . . ."**

had notified the FBI by telephone of his suspicions regarding criminal misrepresentations that the defendants had made to investors. He told the FBI at that time that he already was in possession of corporate records which confirmed his suspicions. Approximately 1 week after alerting the FBI to the existence of certain incriminating records in his possession, Agents arrived to collect them. It was between the first telephone call to the FBI and the time Agents arrived to pick up the first group of documents that Gander removed a second group of records from the president's office. At the time the Agents appeared to pick up the first group of records, Gander turned over to them the second group as well. The defendants argued that this second group of records should have been declared inadmissible since Gander had clearly been in contact with the FBI prior to obtaining them and was acting at their direction and under their control when he went to the office and removed them. The appellate court rejected this contention, holding that Gander, by virtue of his position in the corporation, had a clear right to custody of the records. The court noted that the trial record was devoid of any indication that the removal of the records from the president's office was illegal. The court finally concluded that Gander was not acting as an agent of the FBI at the time he removed the second group of records. It is submitted that since Gander had a right to custody of the records because of his job and did not remove them illegally from the president's office, the result would have been the same even if the court had found Gander to be an agent of the Government.

In *OKC Corporation* v. *Williams*,[21] the corporation filed suit, seeking to enjoin the Securities Exchange Commission (SEC) from investigating certain alleged questionable oil pricing practices. The corporation argued that the SEC investigation began as a result of a fourth amendment violation, and therefore, should be ordered discontinued. At a board of directors' meeting, a decision was made to distribute copies of a report to each of the board members. One member turned his copy over to an OKC employee, who copied it and made the copy available to another corporate employee. The latter turned over his copy of the report to the SEC.

The district court judge granted the SEC's motion for summary judgment on alternative grounds. First, the court determined that when the corporate board member voluntarily handed over his copy of the report to another corporate employee, he took the risk that the latter individual, or anyone to whom the latter person would make the report available, would reveal the report or its contents to the Government. The court observed that the fact that the board member turned the report over to the corporate employee for a limited purpose of performing a tax analysis was of no consequence. The court found that the board member had no reasonable expectation of privacy in the report he voluntarily revealed to his associate. Second, the court concluded that the SEC had no involvement whatsoever in obtaining the report. The district judge subsequently reconsidered and withdrew the portion of his opinion relating to expectation of privacy and assumption of risk. He reasoned that the constitutional issue was difficult and unnecessary to decide, since the case could be decided upon less complex grounds, namely, that the Government played no part in the report coming into its hands. Notwithstanding this withdrawal, the district judge's analysis is highly persuasive.

In *United States* v. *Williams*,[22] the defendant, a former president of a federally insured bank, was convicted of misapplication of bank funds and obtaining extensions of credit from the bank by fraudulent means. After the defendant's scheme was uncovered, he resigned as bank president but remained a member of the bank's board of directors. The defendant's successor to the position of bank president was contacted by an FBI Agent and asked to produce any records in possession of the bank which might prove useful to the investigation of Williams' activities. The new president, in response to this request, gathered up five unsealed envelopes containing monthly checking statements, cancelled checks, and deposit slips belonging to Williams. These items had been held by the bank for Williams to pick up, apparently at his request. The new president voluntarily turned these records over to the FBI Agent when he appeared at the bank. Some of the items were introduced into evidence at Williams' trial.

Following his conviction, Williams argued on appeal that the Government obtained the documents in violation of the fourth amendment. The appellate court held that the new president was acting as an agent of the FBI when he gathered up the questioned documents. Notwithstanding, the court concluded that Williams could entertain no legitimate expectation of privacy in the contents of original checks and other documents which he placed in the control of the bank. The court further held that he could not reasonably expect that the bank would not deliver these records to the FBI for their perusal. Williams' fourth amendment claim was rejected.

*United States* v. *Ziperstein*[23] presented a factual situation strikingly similar to the hypothetical case set forth in this analysis. Ziperstein was the owner of several medical clinics located in Chicago, Ill. Eisentraut was a pharmacist in Ziperstein's employ. Eisentraut contacted the FBI and told an Agent that he had knowledge and documentary evidence that Ziperstein was involved in a large-scale Medicare fraud. He informed the Agent that the records were located in a storage room at one of the clinics, and the Agent expressed an interest in them. The documents included prescriptions filled by Eisentraut, as well as other incriminating papers. Two days later, Eisentraut took the records to the FBI. Some of the documents were admitted into evidence at Ziperstein's trial, and he was convicted. On appeal, Ziperstein argued that Eisentraut stole the records and that this theft, in view of the FBI's expressed interest in the material, violated the fourth amendment. In rejecting the defendant's contention, the court observed:

> "We are not concerned with determining whether these documents are properly characterized as 'stolen.' The Fourth Amendment clearly countenances numerous seizures where the items seized are taken without the express consent of the owner. Instead, the Fourth Amendment inquiry focuses on whether the owner had a reasonable expectation of privacy with respect to the seized items."[24]

The court explained that the prescriptions came within the daily observation and control of Eisentraut, and thus, Ziperstein had no expectation of privacy in such records.

The foregoing cases provide support for the idea that there is no constitutional significance to informant seizures simply because the informant is an employee. Furthermore, there should be no constitutional distinction between an informant seizing verbal evidence, such as was the case in *Hoffa*, and an informant-employee seizing tangible evidence in the form of incriminating records when access and control exist. In these situations, a common thread appears throughout. A person involved in crime has voluntarily exposed criminal wrongdoing to a third party. He is thus held to give up any reasonable expectation of privacy he had with respect to the information so revealed. He is held to have misplaced his trust in the third party and to have assumed the risk that the third party might be an informant. The fact that the informant is an employee and turns over tangible rather than verbal evidence is of no constitutional consequence.

In the hypothetical case, A voluntarily exposed evidence of criminal wrongdoing to B, his employee. A voluntarily gave her access and control over the incriminating records. Therefore, A has no reasonable expectation of privacy in the records with respect to B. B's taking them at the suggestion of the police makes her a police agent; however, this taking involves no search and the fourth amendment is inapplicable. The evidence will be admissible against A at his trial.

The conclusion of this article will examine: (1) Other legal justifications for the seizure of documents by employees, (2) potential criminal liability of both employee and officers growing out of document seizures, and (3) statutory impediments to the taking and use of certain documents. **FBI**

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**Footnotes**

[1] U.S. Const. amend. IV provides in part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ."

[2] 389 U.S. 347 (1967).

[3] 425 U.S. 435 (1976).

[4] *Id.* at 443.

[5] 576 F.2d 165 (9th Cir. 1978), *cert. denied*, 439 U.S. 953 (1978). A mail cover is defined by the U.S. Postal Service (USPS) as the process by which a record is made of any data appearing on the outside cover of any class of mail. It does not involve opening mail or checking the contents of any class of mail. USPS regulations governing mail covers are codified in 39 C.F.R. § 233.2 and designate the chief postal inspector to administer all matters governing mail cover requests by law enforcement agencies.

[6] 442 U.S. 735.

[7] *Id.* at 744.

[8] 392 U.S. 364 (1968).

[9] *Id.* at 369.

[10] 436 U.S. 307 (1978).

[11] *Id.* at 315.

[12] 597 F.2d 851 (3d Cir. 1979).

[13] *Id.* at 865.

[14] Annot., 36 A.L.R.3d 553 at 559 (1971).

[15] 255 U.S. 298 (1918).

[16] 385 U.S. 293 (1966). For other Supreme Court decisions with similar holdings, see *Lopez* v. *United States*, 373 U.S. 427 (1963) and *Lewis* v. *United States*, 385 U.S. 206 (1966).

[17] 401 U.S. 745 (1971).

[18] *Id.* at 751.

[19] 662 F.2d 162 (2d Cir. 1981).

[20] 440 F.2d 823 (7th Cir. 1971), *cert. denied*, 403 U.S. 909 (1971).

[21] 490 F. Supp. 580 (N.D. Tex. 1979).

[22] 639 F.2d 1311 (5th Cir. 1981), *cert. denied*, 70 L.Ed.2d 473 (1981).

[23] 601 F.2d 281 (7th Cir. 1979), *cert. denied*, 444 U.S. 1031 (1980).

[24] *Id.* at 289.

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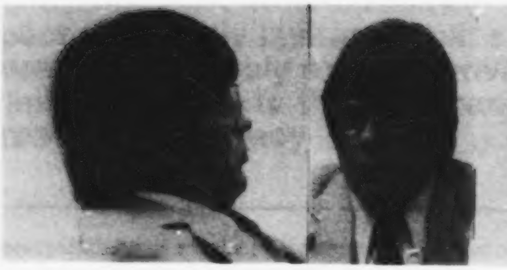
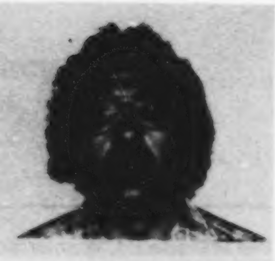


*Photographs taken 1980*



*Photograph taken 1979*

**Philip Andrew Bono**

Philip Andrew Bono, also known as Michael Bono, Philip Bono, Philip Andrew Michael Bono, Jr., Philip Angel Bono, Claude G. DeRusha, Frank Faccio, Michael Faccio, Tom James Franklin, Philip Tobey, Philip Venturi, and others.

**Wanted for:**

Interstate Flight—Bail Jumping (Arson)

**The Crime**

Bono was convicted and sentenced to a 12-year term for the arson of a Lake Tomahawk, Wis., restaurant. He later failed to appear at his appeal hearing.

A Federal warrant was issued on May 7, 1981, charging Bono with unlawful interstate flight to avoid prosecution for the crime of bail jumping.

**Description**

| | |
|---|---|
| Age | 42, born May 12, 1940, Melvindale, Mich. (not supported through birth records). |
| Height | 5'8" to 5'9". |
| Weight | 200 pounds. |
| Build | Stocky. |
| Hair | Brown. |
| Eyes | Brown (wears glasses). |
| Complexion | Olive. |
| Race | White. |
| Nationality | American. |
| Occupations | Bartender, bouncer, cook, fishing guide, laborer, truckdriver. |
| Scars & Marks | Scar left eyebrow, abdominal scar; tattoos: letter "P" on back of left index finger, heart on left and right biceps. |
| Remarks | Has worn a full beard and permanent in hair in the past. |
| Social Security No. Used | 387-40-3504. |
| FBI No. | 584 735 C. |

**Caution**

Bono, a convicted arsonist and reported associate of organized crime members, is being sought for the deliberate burning of a building where he was employed. In the past, Bono has used explosives in the commission of crime. He should be considered armed and dangerous.

**Notify the FBI**

Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone number of which appears on the first page of most local directories.

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When live ammunition is forwarded to the FBI Laboratory for examination, commercial carriers, such as United Parcel Service or Federal Express, must be used. It is a violation of U.S. Postal Service regulations to send such materials through the U.S. mail.

Regulations governing shipments of small arms ammunition are set out by the Department of Transportation (DOT) in their Hazardous Materials Regulations. For small shipments, these regulations can generally be summarized as follows:

1) Small arms ammunition must be packed in pasteboard or other inside boxes, in partitions designed to fit snugly in the outside container, or must be packed in metal clips.
2) The outside of all packages containing small arms ammunition must be marked "SMALL ARMS AMMUNITION."

Special regulations exist for quantities of ammunition over 50 pounds, ammunition with irritating agents, and ammunition to be shipped with other hazardous materials. For these situations, refer to the DOT regulations.

These regulations pertain only to the shipment of live ammunition. Unloaded firearms and fired bullets and cartridge cases may be sent to the Laboratory via the U.S. mail.

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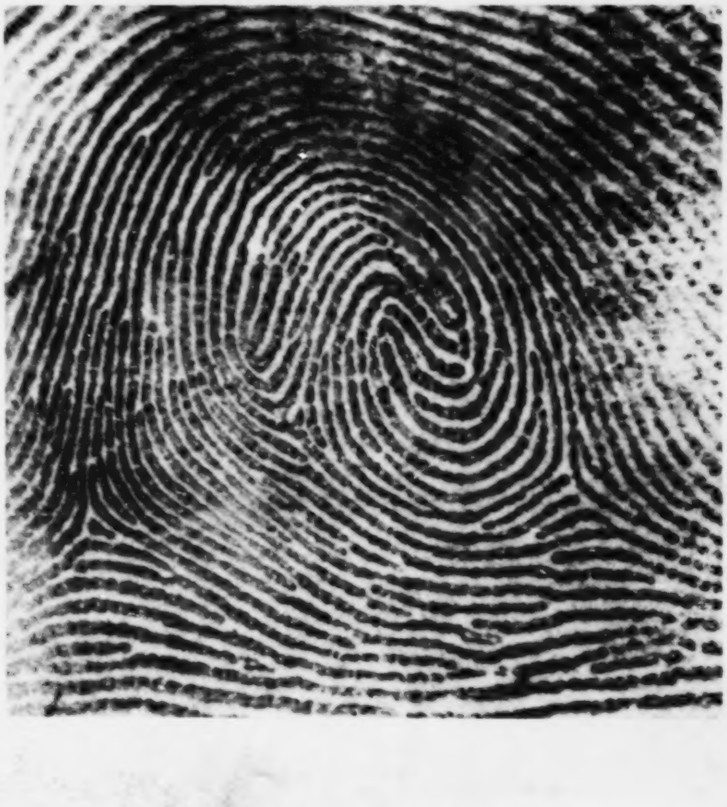

# FBI LAW ENFORCEMENT BULLETIN

SEPTEMBER 1982

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# Nuclear Security

**FBI** LAW ENFORCEMENT BULLETIN

SEPTEMBER 1982, VOLUME 51, NUMBER 9

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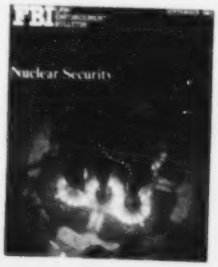


**The Cover:**
A remote location in Idaho provides an excellent setting for a nuclear testing site. See article p. 1.

**Federal Bureau of Investigation**
**United States Department of Justice**
**Washington, D.C. 20535**

**William H. Webster, Director**

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through February 21, 1983.

Published by the Office of Congressional and Public Affairs,
Roger S. Young
Assistant Director

*Editor*—Thomas J. Deakin
*Assistant Editor*—Kathryn E. Sulewski
*Art Director*—Kevin J. Mulholland
*Writer/Editor*—Karen McCarron
*Production Manager*—Jeffrey L. Summers

ISSN 0014-5688
USPS 383-310

"The past 30 years have shown that one of man's most awesome technologies —atomic energy— can blossom among the oldest of nature's developments —sagebrush and lava rock. . . ."

By
HAROLD J. ARGYLE
*Director*
*Safeguards and Security*
*Department of Energy*
*Idaho Falls, Idaho*

# Nuclear Security in a Sagebrush Environment

Mr. Argyle

Even to the untrained eye, the stagecoach trails are still visible. Yet, a short sagebrush-covered distance away is a nuclear reactor complex where electrical power is being generated from a liquid metal-cooled breeder reactor. This is a facility where unused, highly enriched U-235 nuclear material used in the nuclear Navy is being chemically separated and concentrated from "spent fuel elements" behind massive barriers of metal, earth, water, and concrete and where irradiation effects experiments, which would normally take years to accomplish, are being conducted on materials in days to weeks in a test reactor. The antelope, rabbits, coyote, eagles, rattlesnakes, and a myriad of other large and small animals and birds, along with grazing cattle and sheep, continue their unending quest for existence with hardly a second glance to these additions to their environment. They are oftentimes seen grazing along the fence or even on the lawns of the reactor and support facilities. An environmental park designation permits these animals and birds to continue this unusual, but totally compatible, paradox, with little inconvenience. Some sage grouse are tagged with red-wing ribbons to study their migration, and instrument collars are put on a few antelope and coyote to record their travels and locate their dens. Continuing studies have revealed how well the animals have adapted to this altered environment. As hazardous as this nuclear laboratory environment may seem, the biggest danger to the animals are the vehicles driven by site employees.

The Idaho National Engineering Laboratory (INEL) was established by the Federal Government in 1949, on the Snake River Plain between Idaho Falls and Arco, Idaho. Occupying a land mass of 270 square miles, it was first known as the National Reactor Testing Station and was specifically selected as a remote location where new kinds of nuclear reactors could be built and tested without jeopardizing any major populated areas. Atomic reactors were a new technology, and such an isolated and large land area was desirable as a safety precaution for operating new design reactors. Success of the program is evidenced by the fact that initially, no more than four or five reactor facilities were scheduled to be built. Today, 33 years later, of the 52 reactors at INEL, only 15 are still operable. The others have been shutdown and phased out of their research missions. Many of their components have been "cannibalized" for use in new projects or for maintenance or modifications to existing ones. There have been more nuclear reactors and more different types of reactors built at the INEL than in any other place in the world, involving some of the most advanced research programs known to mankind. The significant engineering and scientific achievements and breakthroughs are numerous and are recognized worldwide. In 1966, President Johnson dedicated the first reactor facility built at the INEL as a historical landmark because it was the first in the world to generate electricity.

The relatively flat, remote location of the Snake River Plain was ideal for the necessary security precautions. The primary reasons for selecting this area were the existing headquarters area, a railhead, a Marine barracks, and Navy housing. These facilities supported a Navy program to test fire newly relined 16-inch gun barrels from the U.S. fleet battleships during World War II. Several years later, additional desert land was acquired to provide the testing "buffer" for the INEL nuclear facility until the present total of 890 square miles was involved.

The initial security program needed to protect various kinds and types of reactors was similar to that required for the protection of both classified documents and materials. This required well-trained guards, 8-foot chain link fences with barbed wire selvage to define the operating area perimeters, security lighting, guard-controlled entrances, picture identification badges (to indicate authorized access and any limitations of such access), combination-locked repositories, safes and vaults for storage and key control, alarm systems, and special vehicles. Idaho also had clearance program requirements to verify that permitting access to the classified matter would not endanger the common defense and security. Security education programs were designed to keep employees constantly aware of their responsibilities and the potential consequences of straying from policies and procedures. Document controls required marking, storage, accounting, transmitting, and destruction procedures. We also had a general administrative security program to control the entire INEL land mass (exclusive of the individually fenced reactor areas) for employee and government property controls, area overflights, and contraband, etc. Access within our boundaries off the public thoroughfares was limited to "official business," and all persons were required to have an identification device issued by the Department of Energy (DOE) security to verify this fact. All of these procedures are still in effect.

The isolation of the testing site has been dramatically reduced by the availability of helicopters and all-terrain vehicles, including trail bikes and snowmobiles. Also, many of the programs that were highly classified in the 1950's have been declassified. The "Atoms for Peace" program shared many of our previously "secret" technologies, including the special nuclear materials used in the reactor operations, with not only private U.S. interests but also with international concerns.

Today, unless the fuel is in a classified configuration or is still associated with a classified program, it is unclassified. Because of the strategic importance of this material, security procedures often exceeding those required for classification have been initiated. It is painfully evident that there are elements in our worldwide society who will pay almost any price or go to any length to obtain this material. Possession of this material by malevolent and irresponsible persons could be catastrophic—entire nations could be held at ransom or blackmailed.

Accordingly, security programs have undergone dramatic upgrading during the past few years. A combina-

*Not too friendly citizen*

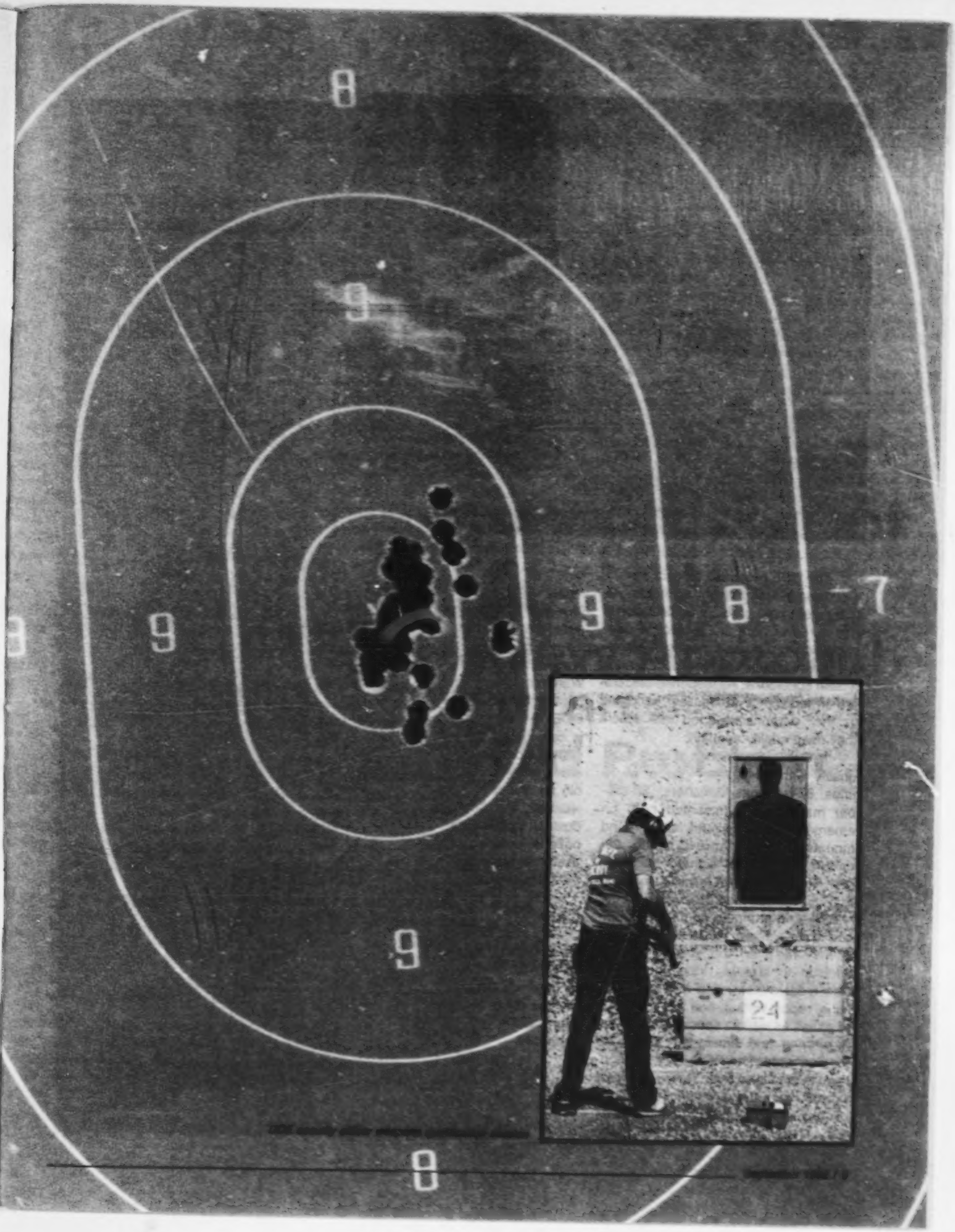
tion of multiple barriers and fencing is used, and improved alarms and lighting, together with closed-circuit TV, provide improved assessment capabilities. To minimize the unauthorized introduction of prohibitive items or removal of nuclear material, highly sophisticated personnel monitoring and X-ray equipment have been installed to check employees and their lunch boxes, briefcases, etc., when they enter or leave work or material access areas. Plant entrance guardhouses, communications centers, and monitoring control locations are being "hardened" to ensure a secure and uninterrupted operation. Computerized access controls using key card systems record all accesses for emergency situations, as well as for information and investigative purposes. They also permit a more positive control to authorized areas for a given employee and those periods of the day such access is permitted. Two-man rules are enforced, and additional background clearance investigations are being made on employees who use, control, or protect nuclear material, and on employees, such as guards and reactor operators, whose work assignments require the utmost confidence. Alarm systems involving the latest "state of the art" are replacing older models to improve coverage and ensure operation under all conditions. Guard forces are receiving intensive training in the use of special weapons, special armored vehicles, night vision devices, and technical communications equipment. Vaults are being upgraded to better protect material and control access. In general, while protection and control of classified matter is still a major concern, the basic thrust is now toward nuclear material protection, and we're making it as tough and as costly as possible for someone to gain unauthorized access.

Administrative security problems have also increased. With approximately 8,800 operational and construction people now on site, we experience the same common thefts, misuse of property, traffic problems, etc., as most municipal and county law enforcement organizations. "Antinuclear" activities, while not yet a major problem, are also increasing.

The "isolated" INEL location has also provided a few unique problems in the area of administrative security controls. For instance, there is a security problem with hang gliders being both an unauthorized air flight over our property and the glider operators being unauthorized entries. The big Southern Butte, adjacent to the south boundaries of the INEL, is sometimes used as an excellent launching point by hang glider pilots, and it has not been uncommon for the INEL guard forces to stop several friends of a glider pilot who was last seen going "up" over INEL property. Indians from various tribes also have been apprehended in the area, exercising what they consider to be tribal treaty rights to hunt antelope and other animals.

Both contract and DOE uniformed forces are involved in the INEL security program. Generally, the contractor guards control access within the individual plant facilities, while the Federal force is responsible for the control of the entire land mass outside of the individually fenced reactor plant areas and is responsible for backup or emergency response to any facility. As a result, the Federal forces are specifically trained in Special Weapons and Tactics (SWAT).

The INEL falls within the provisions of the State of Idaho emergency plan. The Idaho State Police are called upon for assistance when a situation is beyond control of the onsite forces. With their authority for deputization, we depend heavily upon them as a major source of emergency assistance. The FBI also responds to emergencies.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*Warning Communications Center (WCC) Control Panel*

The DOE response officers work a 4-platoon industrial work schedule. All must meet rigid physical qualifications, and some officers are subject to psychological testing as a means of ensuring their capabilities to react under hostile conditions. All response officers are armed with a .357-caliber handgun as their personal weapon with which they must qualify annually.

In addition, response officers must qualify with 12-gage riot guns, M-16 rifles, 37-mm. gas launchers, .30-caliber machineguns (mounted both on emergency vehicles and land ground mounts), and the American 180 .22-caliber laser beam sighted machinegun. Soon, these officers will use M-60 and .50-caliber machineguns on both vehicle and ground mounts. Each officer also carries mace and a 3-frequency radio on the security net. In addition to firearms training, officers also receive instruction in public relations, report writing, first aid, and laws of arrest, as well as special radiological monitoring and emergency response requirements. The DOE force is deputized in the Idaho State Police to permit enforcement of State traffic regulations on our site roadways, trespass laws, etc. There are five separate Idaho counties involved in the INEL land mass, and violators of non-Federal laws are normally sent to the county seat where the arrest or citing occur.

Another vital part of the INEL operations and security program is a Warning Communications Center. This center, operated around-the-clock by DOE–IE Federal uniformed personnel, is considered the nerve center of the Idaho Operations Office during any emergency situation. Those responsible for the site actions during severe weather, fire, flood, radiological or industrial incidents, civil disturbance or national defense emergency report to this emergency center to assume control. The center monitors and controls 19 radio nets and can "tie" any or all together as necessary. They have State police, city police, State Highway Department, National Warning System (NAWAS), and Radio Amateur Civil Emergency Service (RACES) monitoring the radio capabilities and all communications to the center can be recorded.

Extensive employee lists are maintained along with lists of agencies to be notified in event of an incident or emergency. Personnel at the center assist by calling wreckers, ambulances, employers, etc., in case of an accident.

The FBI was woven into the tapestry in the INEL security program from the beginning. Until the last few years, the Bureau performed all of the background investigations for our clearance program. The Office of Personnel Management now provides these for the less than critically sensitive positions—the critically sensitive positions still remain a Bureau responsibility. The Bureau has also provided valuable assistance in investigations of government property thefts, suspected sabotage, and other violations of Federal law, along with training for emergency response and SWAT training.

The past 30 years have shown that one of man's most awesome technologies—atomic energy—can blossom among the oldest of nature's developments—sagebrush and lava rock—in a most unusual but surprisingly compatible environment. While the responsibility for INEL programs has evolved from the Atomic Energy Commission, to the Energy Research and Development Administration, to the Department of Energy, and very probably to some other Federal entity within the next year, some things remain constant: The new bloom of sagebrush each spring, a new supply of coyote pups and antelope fawns, and the phasing out of certain nuclear programs and the development of new ones.

FBI

# Family Therapy in Law Enforcement

## A New Approach to an Old Problem

By
JAMES T. REESE
*Special Agent*
*Behavioral Science Unit*
*FBI Academy*
*Quantico, Va.*

*Special Agent Reese*

Much has been written about the law enforcement occupation. The stress of being a police officer has been researched and the major stressors identified.[1] Just as these various stressors affect the officer, they can subsequently impact upon the family as well.[2] All families have plans for achieving certain goals. Family therapists Kantor and Lehr define these family plans or strategies as "a purposive pattern of moves toward a target or goal made by two or more people who are systematically bound in a social-biological arrangement."[3] The family of a police officer is no exception. In many instances, the law enforcement occupation can upset, alter, or destroy this family strategy. It is important, therefore, to view the family as a whole, to consider the police officer (husband/father or wife/mother) as a part of this whole, and to consider the timeliness and usefulness of family therapy for the police family.

### The Police Family

While the police family has been the subject of numerous written works, family therapy has not yet surfaced or been suggested as a possible remedy for problems within the police family. Increasingly, Americans are becoming aware that the family in America is changing.[4] Institutions such as schools and churches, which once had substantial influence on adults and children alike, are often no longer revered by either. The influence of these traditional institutions appear minimal, at best. There are those who even believe that the family, as we know it, is not just changing, but disappearing.[5]

Society has not totally ignored this changing character of families. Special groups, such as Alcoholics Anonymous, drug rehabilitation centers, and homes for unwed mothers, are attempting to save families by helping to solve family problems. Based solely on the vast number of these groups and the large size of their clientele, however, it seems that just treating symptoms and reacting to the tragedies of individuals is not enough. For many, perhaps all family members seeking help, their symptoms have a meaning only when considered in the larger context of the entire family.

Police families differ in makeup as much as any other family. Thus, there is no stereotypic police family. Efforts have been made, however, to determine whether there is a stereotypic police officer. Dr. Michael Roberts, Director of Psychological Services, San Jose, Calif., Police Department, has determined in his studies that the majority of male officers are only sons or first-born sons. His theory of the stereotypic male officer revolves around the concept of "responsibility absorption" behavior; that is, the only or oldest son is always given the responsibility to "look after things" in the father's absence. As early as age 5, the son may be told, "Take care of mom while I'm gone."[6] It has long been recognized that as adults, people recapitulate experiences they had as children.[7]

Dr. Martin Reiser, Director of the Los Angeles, Calif., Police Department's Psychological Services, is a pioneer in the field of police psychology and police stress. Reiser contends that there is an inculturation process in police academies which "shapes" young officers. In essence, he states that recruits learn more than just skills for policing. They also learn behavior

**"Family therapy is a new and different concept which takes into account the philosophy and orientation of the human condition in a family context."**

and attitudes in keeping with the police image. Still later in their careers, they succumb to the "John Wayne Syndrome," which leads officers to exhibit "macho" behavior, lose sensitivity for the public they serve, and become very authoritarian.

As there are some definable officer traits and stresses, so are there comparable family experiences and stresses which are stereotypic to police families. Police work continually calls upon the resources of all family members. The wife resents the term "pig" and defends her husband's career in the face of all odds. The daughter worries about returning home late from a date because she knows her dad, "the cop," will be waiting to interrogate her boyfriend. The 14-year-old son's friends dare him to sneak into a circus, telling him he won't because his dad is a policeman. Thus, the officer's job comes home regardless of his efforts to leave the problems of the day at work. And when the stress of the officer's job gets to be excessive, help is in order for the entire family.

Psychotherapy has long been the suggested remedy whenever any member of a family experiences mental difficulties. Sigmund Freud, the father of psychotherapy, emphasized certain types of expression in mental illness, such as intrapsychic events, defense mechanisms, conflict, and the subconscious. Although psychotherapists since Freud have varied in their approaches, the theme continues to be treatment of the *individual*. Family therapy is a new and different concept which takes into account the philosophy and orientation of the human condition in a family context.

In a traditional psychotherapeutic approach, the person designated as the "patient" begins therapy sessions with a mental health professional, i.e., psychiatrist, psychologist, or other counselor. Unfortunately, however, the patient may only present to the doctor selected behaviors from his environment. Behavior does not occur in a vacuum.

Mental health professionals are now beginning to look at the family as a system and as an extremely influential variable in the behavior of individuals. Law enforcement is also beginning to view its officers in the family setting. Although an integral part of any law enforcement agency has long been thought to be the individual police officer, this concept has undergone some modification in the recent past.[8]

The FBI has taken significant steps through its psychological services program to view the working unit in the Bureau on more than just an individual basis. Rather, the Agent and his family are of group importance.[9] Instituting this concept and attempting to apply it on a national level is a formidable task. It necessitates that the needs of the Bureau be met in conjunction with family considerations whenever feasible. It is a progressive and challenging step.

Family therapy views the family as a system in which each member is an integral part of the functioning whole. The family system has been defined as an organizationally complex, open, adaptive, information-processing system.[10] In family therapy, the focus is not so much on the relationship between the therapist and the patient, but rather on the relationships between the various members of the family. Because the symptoms are viewed as byproducts of relationship events, the processes within the family unit become of paramount importance.

Human beings are products of their environments. It seems logical, therefore, that no other environment would have greater impact on an individual than the family. When problems arise, whether mental, behavioral, or emotional, it seems wise to treat the environment—the family—not merely the one who exhibits the behavior. After all, in the final analysis, the individual will eventually have to return to the system.

It would be worthwhile, therefore, for police departments to consider the option of family therapy. Numerous departments now have in-house psychological services programs; other departments have mental health professionals on call. These services are accessible, by choice, to officers who believe they are in need of help. There are also specific instances when an officer may be ordered to have a session or sessions with a psychologist or psychiatrist. These sessions are usually mandatory when an officer has been traumatized in conjunction with his job. He may be experiencing trauma or survivor's guilt, or his behavior and/or decisionmaking may have been challenged regarding his suitability to continue his career in law enforcement. Some of these same departments have realized the effects of the police profession on officers' spouses. Many departments have spouse programs which provide special instruction in the unique stresses of police work.[11] Since

**"Continually existent stressors, such as role conflict and role ambiguity, affect the officer."**

many departments already have some psychological services available, it would be advisable to consider expanding services to incorporate family therapy.

## Officer Trauma

The following scenario provides an example of how the family therapy concept can work. While based on purely fictitious events, occurrences of this type are not uncommon to law enforcement in America.

John Lewis is a police officer. He has been on the force for 14 years, is 35 years old, has been married for 17 years, and has two children, Mark, 14 years old, and Alice, 16 years old.

One particular evening, not unlike any other evening on the traffic detail, Officer Lewis observed a car with a rear red lens missing. He pulled the vehicle over, got out of his patrol car, and began to approach the other car. The vehicle appeared to be occupied by two males. It was dark—10:05 p.m.—and further identification was not possible during his approach. When Officer Lewis was approximately 10 feet from the vehicle, the driver brandished what appeared to be a small handgun. Lewis, out of options, drew his service revolver and fatally wounded the driver. He then arrested the other male and called for assistance.

Officer Lewis remained at the scene for approximately 90 minutes, during which time he was questioned extensively by the backup unit. He was then ordered to return to the department, where he was again questioned, once by the homicide unit, in the event it was a "bad shooting" and thus prosecutable, and once by the internal affairs unit to determine whether Lewis had acted within departmental guidelines.

Following this grueling experience, Lewis was sent home. With him went the memory that for approximately an hour he stood by the man he killed. He also believes that the department is no longer supportive of him. Rather, it appears to be seeking his indictment in order to avoid vicarious liability. The impact of such an event on an officer can be devastating. In only some departments will he see a mental health professional before his release. But the impact does not end there. The effects on the family may be even greater. One part of the family system has undergone some serious alterations; in systems theory, the entire family system will be affected.

Communication may be one of the first areas of the family system that is affected. Consider the case of Officer Lewis. Communication in his family may be nonexistent at this point. Lewis has told the story so many times, he is tired of it. He does not care to sit down with his wife or other family members to discuss it. The media floods the airwaves with their version of what happened or what their sources say happened. This may be the only version the family hears. The phone begins to ring at the officer's home. Callers include other officers offering congratulations, friends seeking the story firsthand, and friends of the deceased saying "we'll get even." Thus, this event has had an impact on the entire family. While the officer may be offered assistance, the family is typically ignored.

"Obviously many of the job stresses from within and outside the organization impinge not only on the officer, but also on his wife and family." [12] Many officers make the decision not to communicate the details of their job to their families. They believe that only another officer can understand what they are experiencing or feeling. A comment by Virginia Satir is therefore relevant. She states that it is impossible to *not* communicate. In fact, she places the spoken word toward the bottom of the list of effective ways to communicate.[13] Thus, even silence or the withdrawal or isolation of an officer is powerful communication and has great influence upon the family system.

It is not necessary for an officer to be involved in something as serious as an armed confrontation for this lack of communication to occur. Officers are confronted daily with frustrating situations and untold departmental pressures. "These pressures affect their relationship with their wives and children as well as the difficulties subsequently encountered." [14] Continually existent stressors, such as role conflict and role ambiguity, affect the officer. Due to the paramilitary structure of the police profession and the inculturation process to which the officer has been subjected, there is no place on the job to vent anger or show pain. When anger is vented on the job, it is occasionally aimed against the public the officer serves or is in the form of a "grumble session" over a cup of coffee with fellow officers. These officers are just a few steps closer to succumbing to burnout.

"Because there is no place at work to disperse the anger and frustration of the job, it is often carried home, and the wife and family may 'get it' without provocation. After a rough day, an officer may arrive home and snap at his wife because she is the first one to greet him."[15] Murray Bowen, a noted family therapist, refers to this type of activity within a family as "triangulation."[16] He notes that the pressure need not be from an external source but can be created within the family configuration. The best-known triangle is that of the husband/wife/mother-in-law. Using this same concept, the job can become the third corner of the triangle, along with the husband and wife. It is not unthinkable that the husband, due to lack of support and positive reinforcement at work, will unnecessarily scold his children. He may merely be attempting to determine whether his wife is supportive. Thus, he scolds his children and looks to his wife to see if she will support him or counter his efforts. Usually, no one in this family is aware that the purpose of this intense triangulation is to gain support, not to punish the children. Family therapy clarifies this issue.

In all these situations, the family must be viewed as a system. Systems of all kinds work on an "input-output" basis. If, as in the earlier example, the output, or behavior, is a shooting, it is not a solved problem if, through therapy, only the officer's feedback is clarified and subsequent input is altered. Family therapy ensures that all the parts are informed and gets the *process* back into syncronized movement.

Systems have homeostasis (staying power), communication between parts, and a circulating feedback mechanism. They must all work together in balance and harmony. The therapist in family counseling is a facilitator assisting the family in resolving differences, clarifying issues, solving problems, and taking the pressure off the "identified patient." In this sense, the therapist is a coach—one who keeps the clients from getting caught in an emotional system that assigns blame or guilt.

It is important to note that while the concept of family therapy is somewhat consistent, the various therapists engaged in this field of practice have varying opinions and individual styles. Much like the many forms of psychotherapy, family therapies differ. While some therapists will deal with the husband and wife,[17] others will include the children and any other adult significant to the family.[18] The concept is innovative—the first "whole family" treatment was only in the mid-1950's—therefore, more changes can be expected.

## Conclusion

Families are significant systems of paramount importance to individuals. The family system should be balanced and a state of homeostasis should be maintained.[19]

Regardless of the style of therapy, the importance lies in the fact that the *family*, not just an individual in the family, is treated. This concept of therapy has very special applicability for dealing with stress within the police family.

"Change is inevitable, but the radical changes are behind us and not ahead of us. We now possess a family system congruent in many ways with our urban-industry society."[20] Efforts must continue to be focused on the police family as a system, for this is the environment in which we all live and find our greatest support.

FBI

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**Footnotes**

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Police-Community Relations

INDIANA COUNCIL OF EMERGENCY RESPONSE TEAMS
INCERT
VOLUNTEER

# *INCERT*
## The Citizen/Police Connection

By
**1st SGT. KENNETH L. HOLLINGSWORTH**
*Indiana State Police*
*Indianapolis, Ind.*

*First Sergeant Hollingsworth*

*John T. Shettle*
*Superintendent*

During the height of a recent snowstorm that reached blizzard proportions, the post commander of a northern Indiana State Police district received a telephone call from an obviously frightened young woman. She explained that she desperately needed assistance—she was in labor. Knowing that a trooper could not get to the residence in a patrol vehicle, the post commander informed her that two civilians operating a four-wheel drive vehicle would render her assistance. He further explained that her rescuers would identify themselves by showing identification cards with the word "INCERT" imprinted on them. They arrived a short time later, properly identified themselves, and placed her in a four-wheel drive vehicle. Enroute to the hospital, the woman noticed that one of her rescuers was using an amateur 2-meter hand radio to tell someone at the State police post that she had been picked up and to give their estimated time of arrival at the hospital. As the woman was going inside the hospital, she noticed hospital emergency personnel disembark from two more four-wheel drive vehicles.

Twenty minutes after her safe arrival at the hospital, the patient gave birth to a baby daughter. The new mother recognized one of the attending nurses as one of the persons who had gotten out of a four-wheel drive vehicle when she was arriving at the hospital. If she had inquired further, she would have discovered that the 3 four-wheel drive vehicles were part of a group of 18 that had been rendering service that morning to citizens in need. The vehicles were used to deliver emergency personnel and patients to local hospitals, pickup and deliver food and medicine, and rescue stranded motorists, taking them to National Guard Armories and Red Cross shelters.

These 18 four-wheel drive vehicle operators had three things in common. They were dedicated, responsible citizens who wanted to assist others, they belonged to organized four-wheel drive vehicle clubs, and they were all working with the Indiana State Police and other agencies in the area as part of "INCERT"—the *IN*diana *C*ouncil of *E*mergency *R*esponse *T*eams.

The birth of INCERT occurred immediately after the great blizzard of January 1978, which blanketed Indiana. As in other States, the Indiana State Police had difficulty in coping with the demands that were created by the magnitude of the blizzard. The department, along with other Indiana enforcement agencies, attempted to respond to the crisis by committing all available resources. However, there were not enough officers to answer the thousands of calls for assistance, and many of our personnel were further limited by their inability to get out of their own driveways. Thus, the Indiana State Police found itself unable to respond in an emergency situation as it should have because of a basic lack of preparation in the areas of interagency communications, transportation, equipment, and personnel. Our salvation was the hundreds of citizen volunteers who managed to get through jammed telephone lines at all 19 State police districts and into local law enforcement and other emergency response agencies to offer their assistance. This assistance generally came from existing organized civilian clubs, such as four-wheel drive vehicle clubs, amateur and citizens' band radio organizations, and snowmobile organizations. With the invaluable assistance of these groups, we were able to survive the crisis.

**"INCERT is the statewide establishment of a giant spiderweb of people, communications, and transportation directed toward reacting to and resolving emergency or situational problems that may arise."**

After the 1978 blizzard, the Indiana State Police recognized the need to address three basic areas in attempting to deal with such emergencies. First, there was difficulty in meeting service demands—gone was the idea that we could handle any such situation without assistance. Second, all response organizations needed to get together to formulate a unified response plan. Third, the blizzard had revealed the outstanding capabilities to assist law enforcement already existing within the volunteer citizen organizations.

In light of the proven benefits of working with such individuals and organizations, it was decided that the department should attempt to organize and coordinate the activities of the many citizens' groups that had the capability of offering their services, equipment, facilities, and expertise during a time of crisis.

Officers in the northwest section of the State had already established a very positive working relationship with various volunteer groups. It was possible that their accomplishments in organization and development might serve as the prototype for the proposed State program. In October 1977, they formed a civilian volunteer group to work with their officers in providing emergency services. They first sought to establish contact and rapport with various citizens' band (CB) radio clubs which could perform an "eyes and ears" service in reporting traffic problems. This original contact with the CB clubs brought forth individuals representing other volunteer groups who wanted to participate. The result was the establishment of a volunteer organization that worked with police personnel in the discharge of their emergency functions during the blizzard and the flooding of some of the rivers in the area. Prior to the blizzard, they had been formed into teams composed primarily of individuals from the four-wheel drive vehicle clubs, amateur radio groups, and CB organizations. Lines of communications which bypassed the use of the telephone had already been established, since telephone lines could be tied up during adverse conditions. A 2-meter band amateur radio base station, along with a CB base station, had already been installed at the local State police headquarters facility for use in emergency situations.

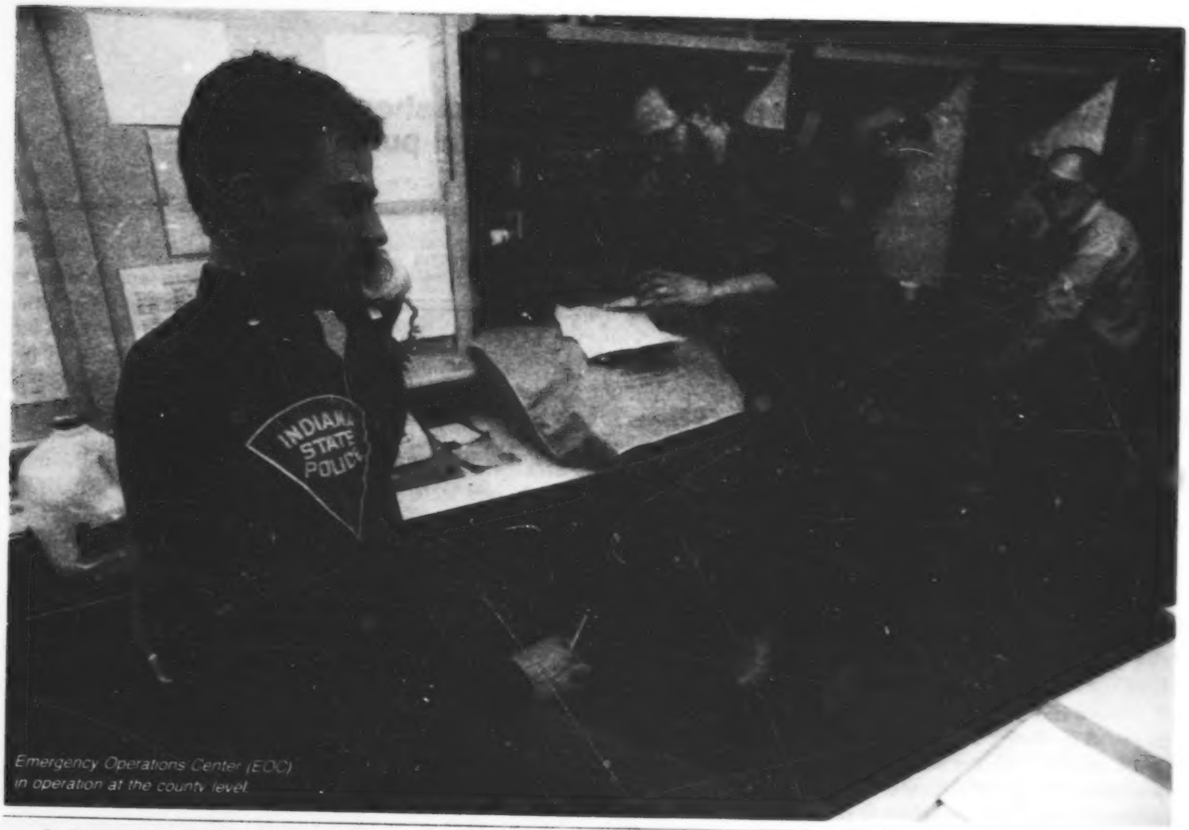
When the blizzard struck, one phone call from the district post commander to selected volunteer personnel started the ball rolling. Civilians owning four-wheel drive vehicles with CB radios picked up assigned amateur radio personnel who plugged 2-meter band radios into the cigarette lighters in the vehicles and proceeded to headquarters. Once there, predesignated amateurs and CB personnel manned their respective base stations within the post, while other "teams" proceeded to the homes of troopers who could not get their police cars on the road. These troopers used the now fully manned four-wheel drive vehicles to answer calls given them on the 2-meter band radio by the volunteers at the post, allowing them to provide police services that might otherwise have been impossible to provide.

After consulting with the department's executive staff and reviewing the progress made at our test district, it was decided to expand the program statewide. The objective was to organize and coordinate the activities of CB clubs, amateur radio clubs, four-wheel drive vehicle clubs, snowmobile clubs, flying organizations, volunteer fire departments, and any other citizen group willing to contribute their time.

In many instances, the participating organizations would be working very closely with representatives of the State Civil Defense Department. Under the guidelines of the Indiana Civil Defense Act of 1975, in the event of a proclaimed disaster, the organizations would function under the direction of this department. In such a situation, the volunteer organizations would be able to enhance the activities of the civil defense department.

INCERT can be viewed as an umbrella organization. It does not attempt to usurp the duties of existing groups or organizations already involved in local emergency response plans. Instead, it attempts to develop and coordinate their capabilities in order to work together to the advantage of all. INCERT has also sought to expand the horizons of the clubs to include not only local or county participation but also statewide involvement. By working together toward a common goal, each group is able to draw upon and complement the activities of the other groups, while at the same time, retain its own separate and distinct identity.

INCERT is the statewide establishment of a giant spiderweb of people, communications, and transportation directed toward reacting to and resolving emergency or situational problems that may arise. It is a citizen/police connection to be activated locally or throughout the State, when and where the services offered by the various citizen volunteer organizations involved are needed.



*Emergency Operations Center (EOC) in operation at the county level.*

In terms of structure, INCERT is a civilian organization whose members interface with State and local governmental entities. Initially, State police personnel provided the administrative leadership for the operational activities conducted at the local level. Later, in an effort to further the organizational process and to enhance and solidify the development of the INCERT program as a true civilian entity, the program was incorporated under the laws of the State as a nonprofit corporation with a board of directors. This action served the dual purpose of promoting the desired unity in volunteer/governmental services for the citizens and allowed the organization to be in a position to accept legally offers of support and assistance in terms of materials and financing of INCERT operations.

The proposal to incorporate was presented to representatives of several of the civilian organizations already participating at the local level. These civilian organizations, all having statewide group affiliations, are now represented on the INCERT Board of Directors. The present board consists of representatives from the Indiana Volunteer Firemen's Association, the Indiana REACT Council, the American Radio Relay League of Indiana, the National Four-Wheel Vehicle Association, the Indiana Wing of the Civil Air Patrol, the Indiana Snowmobile Association, the State Office of Civil Defense and Emergency Management, and two persons from the Indiana State Police.

State police department personnel serve as a catalyst in providing the necessary coordination for communication between the administrative and operational levels of the program. The department's deputy superintendent for field operations serves as the program director. He, along with the department's chief communications engineer, also represents the State police on the corporate board of directors. The INCERT State coordinator, located at general headquarters, functions within the operations section of the Enforcement Division. The department's Executive Division provides any necessary legal services required and responds to any liability considerations.

## Emergency Operations Centers

Administratively, the Indiana State Police is broken down into five geographic "areas" in the field. In each of these areas, a trooper has been designated as the INCERT coordinator. The coordinator, part of the area command staff, is responsible for organizing and coordinating INCERT activities in his area. In most cases, each area is administratively responsible for four districts. At the district level, troopers and communications officers are selected, (generally one per county, and a district may have as many as eight counties) to

**"Citizen volunteers are not police officers and should not exhibit any actions that would lead the general public to believe otherwise."**

function as county INCERT liaison officers. These officers, in addition to their regular duties, have the added responsibility of being the liaison between district personnel, other law enforcement organizations, local governmental agencies, and the participating citizen groups. Typically, these officers, along with the area INCERT coordinators, have been instrumental in locating and establishing county emergency operations centers (EOC's) from which county INCERT activities are coordinated when activated. EOC's were developed to alleviate the lack of coordination between agencies that existed during the blizzard of 1978.

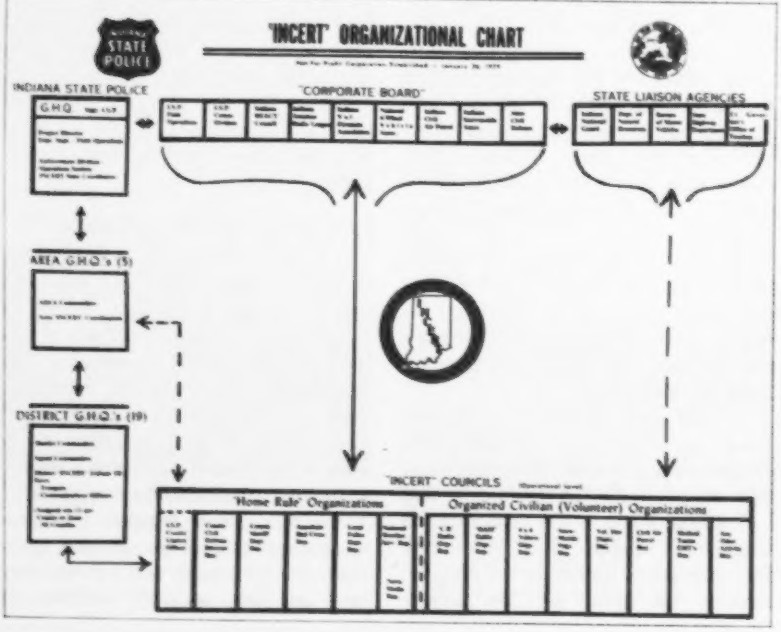
There is at least one EOC in each county. It is usually located in the local police department, sheriff's office, civil defense building, or volunteer fire department, although it could be any place where representatives of the various governmental and civilian organizations can meet.

The three primary requirements to be met in choosing an EOC site are geographic location, availability to all involved groups, and suitable communications facilities already established or lending themselves to the placement of all necessary systems. Emergency electrical power and extra telephone facilities should also be available. Communication links should be established from all EOC's to their respective State police districts and other response agencies via CB and amateur radio equipment, which is usually donated to INCERT for use in the EOC's by the volunteer organizations or business and industry. During times of emergency, the media services in the area advise citizens to direct their requests for assistance to the EOC's. Requests received by the response agencies are also generally referred to the EOC's for action.

It is necessary that representatives from local law enforcement and other government agencies be alongside the trooper liaison officer to assist in the coordination and direction of INCERT activities. Ideally, the offices of the county civil defense, sheriff, local police, Red Cross, and perhaps the mayor and/or county council should be represented. Representatives from these offices, plus representatives from each of the civilian organizations, generally meet once a month, or as needed, to plan future service activities and prepare for possible emergency situations.

Identification cards are issued to all participating citizens and a master list of INCERT identification numbers is maintained. Each volunteer is assigned a different identification number which remains his as long as he remains in good standing within his club/organization and conforms to the criteria established by the board of directors and the bylaws of the corporation. An identifying symbol of participation in INCERT, such as a uniform logo on an armband, a hat patch, or a shield on their clothing or vehicle, indicates to the general public that they are participating in an INCERT operation under the authority of the Indiana State Police or other cooperating law enforcement agencies.

Citizen volunteers are not police officers and should not exhibit any actions that would lead the general public to believe otherwise. In many instances, though, they have performed traffic control or communication functions. In other instances, citizen volunteers have assisted in closing roads in the interest of motorist safety.



As a new group enters the program, an INCERT organizational survey is completed. This survey lists the name of the group, the State police district and county of origin, three "key contact" personnel within the group, individual names and social security numbers, INCERT identification numbers assigned each new member, and the various expertise and equipment that is available. This survey is completed in duplicate, with the original being kept at the appropriate area headquarters and a copy being kept at the district in which the new group is located. Updating such files allows a given area or district to determine what organizations are available to assist law enforcement in their respective regions of the State.

Since its conception in early 1978, INCERT volunteers have performed many valuable services while working with Indiana enforcement agencies and other governmental entities around the State. They have been activated numerous times to assist in severe weather emergencies, such as tornadoes when they have assisted in securing areas where homes and articles have been scattered. During flood emergencies, volunteers have loaded sandbags and assisted in the evacuation of victims driven from their homes. In the winter months when heavy snows have restricted movement on some of the major highways, the volunteers have rescued stranded motorists, taking them to shelters. They have delivered food and medicine and have transported emergency hospital and media personnel so their vital services could be maintained. They have also participated in certain activities geared toward promoting traffic safety and crime prevention.

On major holiday weekends, INCERT volunteers set up "travelers aid stations" at selected State rest areas in conjunction with the Indiana State Highway Department and the Department of Tourism. Coffee, cookies, and soft drinks are available to travelers as a safety wake-up. Those volunteers involved with amateur and CB radios establish their radio "net" at these sites to assist motorists who have become separated from fellow travelers by sending out "attempts to locate." Many amateur radio and CB volunteers have also assisted with the Indianapolis 500 for the last 4 years in keeping motorists with CB and amateur capabilities aware of traffic and crowd control conditions on the way to the track.

Volunteers have performed an "eyes and ears" service by witnessing and reporting criminal offenses. In many instances, these reports were made directly to our State police posts via amateur and CB radios. "Pumpkin patrols" have also been extremely successful the last 4 years in reducing vandalism from highway overpasses during Halloween. This again is a reporting service only. The volunteers do not stop citizens or vehicles engaged in suspicious activity—they simply report it. The mere presence of several vehicles with antennas in a neighborhood can act as a deterrent to criminal activity.

There have been several instances in which, under the close guidance and direction of sworn officers, INCERT volunteers have assisted in criminal investigations. Volunteers assist by searching for missing persons, stolen property, and evidence at crime scenes. At one homicide investigation, valuable evidence was located by INCERT personnel using their own metal detectors.

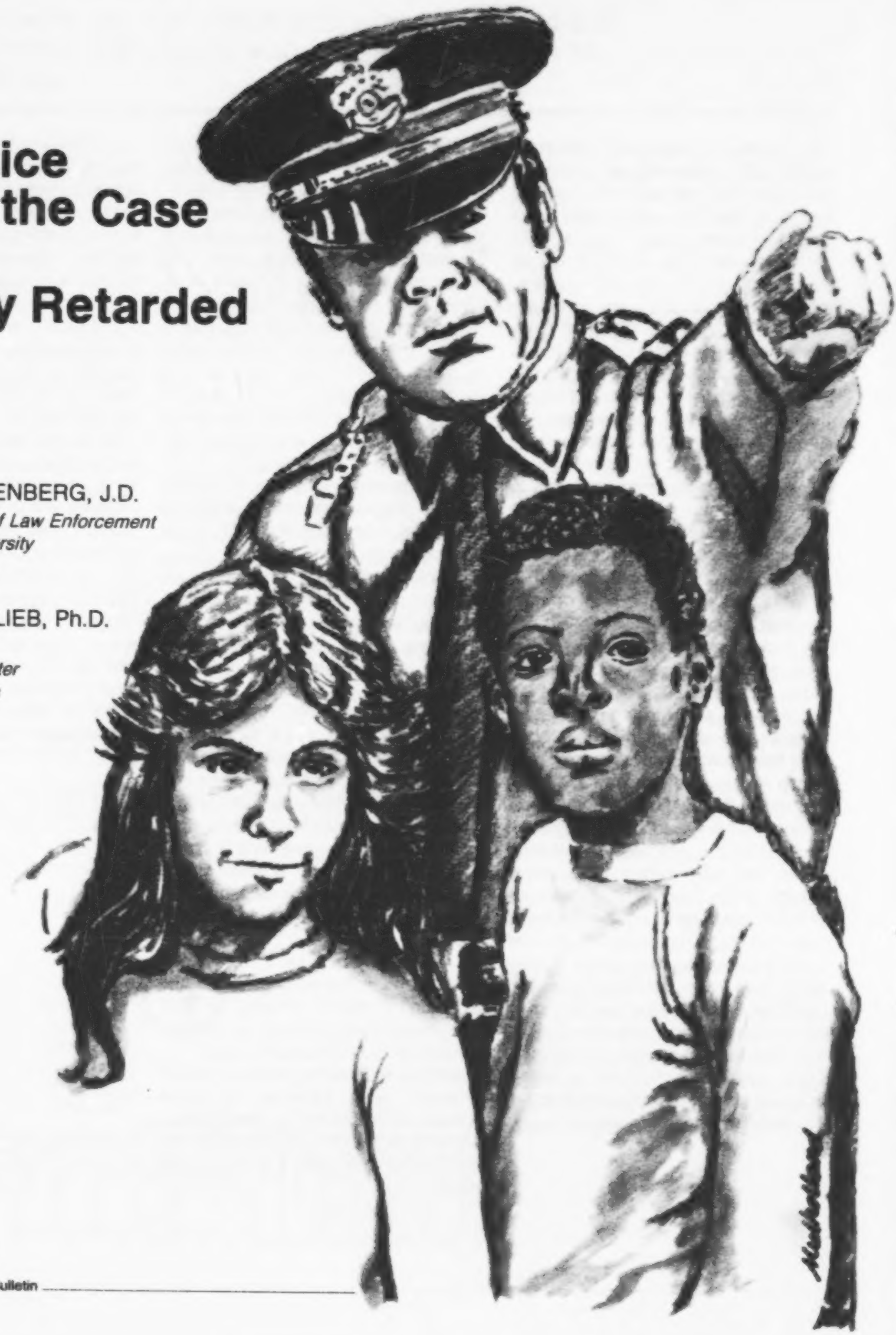
There are many different types of service INCERT volunteers are able to perform. These services can take many forms—emergency service, situation service, human service, and community service. Volunteers are probably law enforcement's greatest resource and are certainly the most cost-effective.

INCERT is the vehicle that has coordinated the activities of these organizations in the interests of public welfare. The flexibility of the program, the number of volunteers participating (over 16,000), and the diversity of the volunteer services lend themselves to something as normal as a few volunteers assisting with a local search-and-rescue mission to something of the magnitude of the blizzard of 1978.

The potential effectiveness of the INCERT program is unlimited in scope. There is every reason to believe that it will continue to play a very active and vital part in responding to conditional and/or emergency situations that may strike our State. It may also serve as a model for the rest of the Nation.

**FBI**

# The Police Role in the Case of the Mentally Retarded Child



By
MARTIN A. GREENBERG, J.D.
*Assistant Professor of Law Enforcement*
*Arkansas State University*
*State University, Ark.*
and
ELLEN C. WERTLIEB, Ph.D.
*Assistant Director*
*Special Learning Center*
*College of the Ozarks*
*Clarksville, Ark.*

*Dr. Greenberg*

*Dr. Wertlieb*

Evidence for the existence of mental retardation has been dated as far back as prehistoric times. However, the recognition, understanding, and treatment of mentally retarded individuals has slowly evolved through millions of years.[1] History demonstrates that a better understanding of these individuals leads to more humane treatment.

Since World War II, there has been a progressive deemphasis in the need to institutionalize retarded children, thus increasing the number of families who rear these children in their homes. In conjunction with this trend, two recent statutes have mandated considerable procedural and substantive protections for children in need of special education programs and services. According to Section 504 of the Rehabilitation Act of 1973, physical access to public buildings and grounds must be made available by agencies receiving any type of Federal assistance; the Education of All Handicapped Children Act of 1975 requires that federally aided school systems provide every handicapped child with a free public education. These regulations provide more of an opportunity for retarded children to interact with the rest of the public sector than ever before. Consequently, police personnel have an increased likelihood of making contact with these children.

When a troublesome incident regarding the conduct of a mentally retarded child occurs, police officers can expect to be the first person called upon to help resolve the problem. While mentally retarded persons represent approximately 3 percent of the people in the United States, "such persons reportedly comprise about ten percent of the population which is confined in jails and prisons";[2] and "an overwhelming majority of adult retarded offenders experience their first difficulty with the law as juveniles."[3]

The police mission in juvenile work includes rendering service to the mentally retarded individual. The police officer's effectiveness is principally a function of two factors—the quality of police training and a sincere concern for retarded individuals and their families. An array of manpower is needed to prevent retardation and to cope with it when it does occur. Police can strategically aid in these endeavors through an understanding of the problems associated with mental retardation and a willingness to implement the laws that entitle all handicapped children to certain benefits and procedural due process protections.

Today's police officer is required to enforce the law in situations that are more and more complex. Such complications arise whenever a mentally retarded person violates the law. However, low intelligence alone does not play an important role in causing delinquency, unless this factor combines with other factors such as poor home environment, mental disease, alcoholism, parental or guardian discord, low socioeconomic status, or community rejection toward children.

**"History demonstrates that a better understanding of these individuals leads to more humane treatment."**

In 1976, President Gerald Ford stated that "the treatment we have accorded mentally retarded and other handicapped members of our society tests our success and challenges our ideals. Only recently we have sought to assure the right of mentally retarded citizens to develop their full potential, to share in the bounty of our land and to receive equal justice under the law."[4]

In 1978, the Report of the Liaison Task Panel on Mental Retardation submitted to the President's Commission on Mental Health urged that all "help-giving persons who are in frequent contact with mentally retarded people . . . be offered training and supportive services in basic mental health skills to better help mentally retarded people cope with their problems of living."[5]

The importance of the police role cannot be overemphasized because their contacts are often the first steps in the community's treatment system for dealing with the retarded offender. Police come into contact with the retarded child for the same reasons they come into contact with the average child. The child might be lost, confused, or in need of special help. The child might be the victim or suspected offender of a crime. Mentally retarded offenders frequently repeat their crimes. They are often easily arrested because they make no attempt to run or disguise what they have done. Moreover, they are often quickly sentenced and required to serve full terms. Law enforcement personnel can prevent mentally retarded children from becoming convicts by being familiar with the symptoms of mental retardation and helping these individuals get the resources they need.

## Identification

There are many problems associated with identifying an individual with mental retardation. In fact, the precise definition of mental retardation differs among the various experts in the field. Whereas some experts emphasize causation, others emphasize performance level. In addition, the definition is colored by a given society's sociocultural standards.

The most widely used definition in the United States is that given by the American Association on Mental Deficiency:

> "Mental retardation refers to significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior (i.e., ability to care for oneself and get along with others in a manner appropriate for one's age), and manifested during the development period (i.e., from 1-18 years old)."[6]

Given the problems associated with the definition of mental retardation, one, then, is confronted with the problem of identifying those individuals who are mentally retarded. There is a great deal of controversy concerning the diagnostic tests used to determine intellectual functioning. The tests are considered to be biased in favor of the white middle class population. Consequently, the administration and interpretation of these tests by a person who is not sufficiently skilled can result in tragic misdiagnoses. If a child's intellectual functioning is found to be significantly below-average, he or she might be described as having mild, moderate, severe, or profound retardation based on the level of deficiency. The police officer is most likely to come into contact with mildly retarded individuals since they comprise the bulk of this special population.

Those children diagnosed as mentally retarded are supposed to be given services within the public school system. However, the harsh reality is that many of these children are not adequately served.[7] Implications surrounding the diagnosis of mental retardation in court cases becomes increasingly problematic. While the testimony of the police as well as various specialists, such as psychologists and educators, is considered, the disposition of a case is often governed by the available treatment facilities. Consequently, a mentally retarded individual might be placed in an institution for the mentally ill simply because a more appropriate facility has no available space.

## Characteristics

Before police officers can know how to handle cases involving mentally retarded children, they must be familiar with the characteristics of mental retardation. However, precise characteristics are difficult to present since the label covers a broad range of ability deficits from mild to profound retardation. In addition, the retarded child is like any other child with his or her individual traits. Whereas some retarded persons have physical abnormalities, others have the physical appearance of the average person.

It is important to emphasize that mental retardation is not synonymous with mental illness. It is true that some retarded individuals might develop mental illness, but similarly, some people in the average population might develop this problem.

The following list of characteristics associated with mentally retarded children is necessarily broad in scope. However, it can provide the police officer with a general understanding of this special population.

1) Retarded children often have difficulty in expressing themselves verbally. They may also have difficulty in understanding what they are told, especially when the sentences are long and express complex ideas.
2) Retarded individuals may have difficulty in making judgments. They may not be able to foresee the consequences of their actions. Consequently, it may be very easy for them to fall victim to a criminal's schemes.
3) These children may not be able to concentrate on any one task for a long period of time. In addition, they may be distracted from a task very easily.
4) Retarded children may have difficulty in remembering what they have seen or events that have just occurred.
5) Physical abnormalities are common among moderately, severely, and profoundly retarded children. However, such abnormalities are uncommon among the mildly retarded—these children look "normal."

## Special Factors Affecting Personality Development

Up until this point, no question has been raised as to the need to identify and label individuals as mentally retarded. In fact, the present article is based on the premise that an accurate picture of an individual will aid the police officer in making appropriate discretionary decisions concerning that individual. Such an understanding cannot be reached without first labeling the person. Labeling also enables agencies to obtain funds and establish appropriate programs. However, these gains do not come without cost. The labeled children are viewed as different from the average population. In essence, they can be considered as members of a minority group. As with other minority groups, they may be subject to prejudice and are likely to be rejected. It is unlikely that they receive positive feedback on many occasions. The difficulties encountered as a result of their minority group status may contribute to feelings of insecurity and low self-worth. There is an additional danger that the label will lower teacher and parent expectations. While it is important to maintain realistic expectations so as not to overly frustrate the person, demands must be made on these children so that they can develop to their fullest potentials.

All of these children will develop their own means of coping with the frustrations encountered due to their slowness. Some children may become timid and shy, while others may become very hostile and aggressive. The means with which the parents of these children cope also varies. Unfortunately, some of these parents may resort to punishing themselves or victimizing their children. In fact, statistics indicate that the child who is handicapped is more likely to be abused than the child who is not handicapped.[8]

## Causes

Mental retardation can be caused by genetic and/or environmental factors. Those cases which are genetically caused are often associated with a specific syndrome (i.e., group of characteristics). Fortunately, our advanced medical technology has made it possible to oftentimes determine a couple's risk of producing a child with such a syndrome.

The most common genetic cause of moderate to severe mental retardation is Down's syndrome. This abnormality was formerly called "Mongolism" because of the characteristic slanting eyes of the affected individuals. However, the resemblance to the Mongoloid people is slight; therefore, this latter term was dropped because of the negative connotation it brought to the Mongoloid race.[9] Another disorder frequently heard about is Phenylketonuria (PKU). It is a disorder in metabolism that can lead to mental retardation if not detected and treated through a special diet begun shortly after birth.[10]

There are a variety of other abnormalities linked to the sex of the individual. For example, Turner's syndrome can only be found among females. It is

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only sometimes associated with mental retardation. Individuals afflicted with this abnormality have difficulties in space/form perception—a problem which becomes quite apparent when faced with the task of reading a map.[11] In contrast to Turner's syndrome, Klinefelter's syndrome can only be found among males. It, also, is not always associated with mental retardation. Although this syndrome has sometimes been associated with criminal records involving sexual offenses and arson, such behavior is likely to be caused by the individual's immaturity rather than any "criminal personality."[12] The group of genetically abnormal males labeled as XYY males do not display any distinct group of characteristics. They may or may not be mentally retarded. There has been much controversy concerning the criminal tendencies of these individuals. Research has indicated that XYY male prisoners have family histories similar to the typical prisoner.[13] However, a French study conducted with noncriminals indicated that XYY males could be more easily provoked to display aggression in frustrating situations as compared to those males without such a genetic abnormality.[14]

Unlike genetic conditions, environmental factors associated with mental retardation are more controllable. These factors are potentially hazardous to the fetus in utero as well as to the developing child. The unborn child is especially at risk of being retarded if a pregnant woman is undernourished, exposed to radiation, or ingests specific drugs. Infections such as rubella, chicken pox, and syphillis in the expectant woman will also raise the risk of retardation. In addition, noninfectious conditions, such as diabetes, will place the unborn infant at risk. Some hazards to the developing child include severe head injury, poisoning, and lack of oxygen from delayed resusitation. In addition, specific infections, such as meningitis, can be the precipitant of mental retardation. Factors associated with psychosocial disadvantage also place the developing child in danger. These could include inadequate nutrition, low achievement motivation, overcrowded home, inappropriate school instruction, instability of the parents, poor medical care, and poor childrearing practices.

## The Retarded Child and the Juvenile Justice System

Recognizing the immaturity of young people, the policy of family courts has been to consider the antisocial acts of average children as behavior problems rather than as criminal behavior. Mentally retarded children should certainly be subject to the same treatment philosophy. Police are encouraged to use discretion in referring cases to family court based on the principle that the home is usually the best place to rear a child. However, when it seems clear that the parents are unable to cope with a child's problem, referral can be made to local youth-oriented social agencies. Mentally retarded children are especially deserving of this diversion opportunity prior to court referral.

In conjunction with the trend to seek diversion opportunities, a Federal mandate has been passed to deinstitutionalize status offenders such as runaways or truants. The use of special group home facilities or short term foster homes may be appropriate alternatives in the case of mentally retarded children. Departmental rules governing the questioning, searching, and "arresting" of juveniles differ among the various jurisdictions. However, some specific generalizations can be drawn. The major premise held at every stage of police and court processing is that the particular action is "fundamentally fair," and consequently, withstands the constitutional test of affording the individual his rights. As with the average child, care must be exercised by the police and court attachés in ascertaining the voluntariness of admissions of involvement or plea statements, inasmuch as some mentally retarded children may be desirous of pleasing authority figures or may acquiesce to forms of coercion more readily than other persons. The same care must be exercised when receiving the juvenile's consent to search. The child may waive his rights without actually comprehending what has occurred. The presence of counsel or a parent may be very important in order to avoid such an incident.[15] Without this assistance, the police officer is faced with the very difficult task of judging the retarded child's level of comprehension.

Although the Supreme Court has not yet held that the retention of an advisory counsel for mentally retarded accused persons is required at every stage in police and court processing, it would appear to be appropriate. In addition, some retarded individuals might need interpreters or aides similar to those required by deaf persons or foreign language clients.

Without the appropriate accommodations, a retarded child is clearly handicapped if he becomes a case in the juvenile justice system. In fact, the 1976 National Task Force on Juvenile Justice and Delinquency Prevention recommended that after the filing of a delinquency petition, the family court should hold a hearing when there is evidence that the juvenile may be mentally retarded.[16] Civil commitment proceedings could then be initiated. This places the mentally retarded person in the tenuous position of possibly being indefinitely institutionalized if extreme caution is not taken—a possibility which exists simply because the person is mentally retarded. However, such an action would be in violation of the principle of the presumption of innocence and the right to trial. In this regard, the Supreme Court ruled in the case of *Jackson* v. *Indiana* that indefinite commitment to a mental institution could not follow automatically from a finding of unfitness to stand trial.[17]

## The Retarded Child and the Civil Law

We have stated that the mentally retarded person may be unjustly committed to an institution if caution is not exercised. However, constitutional civil law has been interpreted in a manner so as to prevent such a travesty from occurring. The concepts of basic due process and equal protection are applicable to cases involving civil commitment of a mentally retarded person. In addition to being entitled to a hearing, such an individual is entitled to counsel and adequate notice to prepare for the hearing. The person is also entitled to be present at the hearing and to put on a defense.[18]

Historically, the law has reflected the desire to protect the young from the possible results of their own immaturity. Consequently, there are many restrictions on the activities of all children under the age of 18. For example, all children are bound by the will of their parents concerning where and how to live. In addition, they are required to get their parents' consent before marrying or learning how to drive. Along with these restrictions, children are entitled to such rights as support and education.

While the average child looks forward to broader rights upon assuming the age of majority, the retarded child's future rights may be in doubt. For example, the areas of marrying, raising a family, entering into contracts, suing, holding office, voting, and holding a job are controversial with regard to the mentally retarded population. However, the law provides that such rights cannot be interfered with unless a test of "compelling justification" is satisfied.[19]

Public statements are often made to communicate a particular minority group's plight. In 1972, the United Nation's Declaration on the Rights of Mentally Retarded Persons was adopted to make the public aware of the rights of mentally retarded persons. Of special interest, it was declared that the mentally retarded person is entitled ". . . to the maximum degree of feasibility, the same rights as other human beings." The mentally retarded person is entitled ". . . to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential." The mentally retarded person is entitled ". . . to protection from exploitation, abuse and degrading treatment." And ". . . if care in an institution becomes necessary, it should be provided in surroundings and other circumstances as close as possible to those of normal life."

The mere statement of rights which are deserved is often not enough. Consequently, laws are often passed to prevent an infringement of these rights. Two laws which are aimed at safeguarding the rights of mentally retarded children are Public Law (P.L.) 94-142, the Education for All Handicapped Children Act and Section 504 of P.L. 93-112, the Vocational Rehabilitation Act Amendments of 1973. P.L. 94-142 assures the availability of a free, appropriate education for all handicapped children between the ages of 3 and 21 at no cost to parents or guardians. However, this mandate

**"Before police officers can know how to handle cases involving mentally retarded children, they must be familiar with the characteristics of mental retardation."**

does not apply to children within the age ranges of 3 to 5 and 18 to 21, if such requirement is inconsistent with State law. In order to ensure appropriate education, the law mandates nondiscriminatory testing and evaluation, the maintenance of an individualized education program for all handicapped children, consultation with parent or guardian, and educational placement of the child in the "least restrictive" environment.[20] It is assured that each of these requirements are carried out with complete procedural safeguards.

Section 504 is much broader in scope. It is a basic civil rights statute which prohibits discrimination against the handicapped by educational or noneducational (e.g., employment, health care, social services) programs receiving any type of Federal assistance. Such issues as accessibility to buildings and grounds are covered under this statute.

These regulations are highlights of the various regulations that apply to the mentally retarded child on a national scope. The police officer should also be aware of the local statutes which are applicable only in his State.

### Techniques for Handling Mentally Retarded Children

It is essential that police officers be equipped with the knowledge of local, and in some cases, national resources for the proper referral and disposition of cases regarding mentally retarded children. In addition, there are published materials that can give police officers further insight into mental retardation and consequently aid in their future interactions with this special population.

The following techniques are also helpful in this regard:

1) A positive and direct response to each subject will enhance the overall ability to cope successfully with the mentally retarded child. An officer can best prepare himself for undertaking such a response through an understanding and appreciation of the difficulties faced by the retarded child.

2) The police officer should be very clear and specific in any directions given. For example, if the child is told not to display certain behavior on a street corner, the retarded child might go to another street corner and display the same behavior if it is not clearly explained that the behavior is not appropriate at any public location.

3) Simple language should be used when talking to the retarded child. In addition, the child should be asked to explain what was just said. Although the child might respond in the affirmative when asked if everything was understood, this might not be the case—he might respond with the word "yes" to almost anything that is asked.

4) Since retarded children often have difficulty in expressing themselves verbally, insistence on such a response might be very frustrating and frightening. Consequently, the use of visual aids, such as pictures, might be very helpful in explaining things, as well as in obtaining responses.

5) Retarded children should be given the same respect as other children. They should not be treated with ridicule or pity. In addition, they should not be treated as if they were not present when a third party is being consulted.

6) Expect the mentally retarded individual to act in a manner which would be more appropriate to someone younger than his age, such as sudden temper tantrums, or the refusal to respond because of fear or shyness. The level of immaturity will depend upon the degree of retardation.

7) When a police officer must make contact with the child's parents or guardians, he should not hold any preconceived notions as to the type of care given the child. The parents should be approached in a positive and direct manner regarding the specific incident. When appropriate, the officer should provide the parents with the names of local agencies that provide supportive services to the retarded and their families.

## Conclusion

Police officers are charged with the control of juvenile delinquency. At times, they will encounter youngsters with special conditions. If such an offender is to be helped and the ends of justice served, police officers must understand the nature of the problem. By knowing some of the characteristics and causes of mental retardation, as well as the laws involving the retarded individual's basic civil rights, future encounters will be made easier. It is important to stress that these individuals have the same needs as other individuals. They have pride and need to feel a sense of worth and human dignity. However, due to their limited ability to cope in some situations, retarded individuals are often among the citizens most in need of a police officer's services.

In the past, the mentally retarded person has not been "very well cared for by mental health programs, and even less so by the criminal justice system."[21] These individuals have often been shuttled back and forth between agencies sharing overlapping jurisdictions. However, the police can begin to break this cycle through insight and the use of the most effective response for a given situation. The result will be a savings of time for the police officer, fewer taxes for the community, and justice for the mentally retarded citizen.

Mentally retarded children do not have to become delinquents, nor can we explain delinquency as a manifestation of the retardation. It is not surprising that some of these children become delinquents; it is amazing that more do not. Society must recognize the need for psychiatric and social services, realistic education, and vocational counseling for all its citizens. More importantly, we must cease looking with derision at those in a different cultural milieu.[22] **FBI**

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**Footnotes**

[1] See R.C. Scheerenberger, *A History of Mental Retardation* (Baltimore: Brookes Publishing Co., 1982).

[2] A. Talent and R. Kelgord, "The Mentally Retarded Probationer," *Federal Probation*, vol. 39, No. 3, 1975, p. 39.

[3] Ibid, p. 41.

[4] M. Kindred, J. Cohen, D. Penrod, and T. Shaffer, *The Mentally Retarded Citizen and the Law* (New York: The Free Press, 1976), p. iii.

[5] President's Commission on Mental Health, *Report of the Liaison Task Panel on Mental Retardation: Volume IV* (Washington, D.C.: U.S. Government Printing Office, 1978), p. 2011.

[6] E. Grossman, ed., *Manual on Terminology and Classification in Mental Retardation* (Washington, D.C.: American Association on Mental Deficiency, 1973), p.11.

[7] See Dena Kleiman, "Many Disabled Still Not Placed by City Schools," *New York Times*, August 31, 1981, pp. 1 and D10.

[8] M. Soeffing, "Abused Children are Exceptional Children," *Exceptional Children*, 42, 1975, pp. 126–133.

[9] N. Robinson and H. Robinson, *The Mentally Retarded Child* (New York: McGraw-Hill, 1976), pp. 77–88.

[10] Ibid., pp. 97–100.

[11] Ibid., pp. 90–92.

[12] Ibid., p. 92.

[13] Ibid., pp. 92–93.

[14] B. Noel, J. Duport, D. Revel, I. Dussuyer, and B. Quack, "The XYY Syndrome: Reality or Myth?" *Clinical Genetics*, 5, 1974, pp. 387–394.

[15] See *In re Thompson*, 241 N.W. 2d 2 (1976).

[16] See National Advisory Committee on Criminal Justice Standards and Goals, *Task Force Report on Juvenile Justice and Delinquency Prevention* (Washington, D.C.: U.S. Government Printing Office, 1976).

[17] See *In re Gault*, 387 U.S. 1 (1967) for the rights of juveniles in delinquency proceedings.

[18] See *Lessard* v. *Schmidt*, 349 F. Supp. 1078 (1972).

[19] Kindred, et al., supra note 4.

[20] See Section 612 (5) (B) of this Act.

[21] L. Radelet, *The Police and the Community*, 3d ed. (Encino, Calif.: Glencoe, 1980), p. 388.

[22] B. Blatt, "Some Persistently Recurring Assumptions Concerning Education of the Mentally Retarded," in *Mental Retardation: Readings and Resources*, ed. J. Rothstein, (New York: Holt, Rinehart and Winston, 1971), pp. 44–45.

# REASONABLE EXPECTATION OF PRIVACY, THE EMPLOYEE-INFORMANT, AND DOCUMENT SEIZURES

## (CONCLUSION)

By
MICHAEL CALLAHAN
*Special Agent*
*Legal Counsel Division*
*FBI Academy*
*Federal Bureau of Investigation*
*Quantico, Va.*

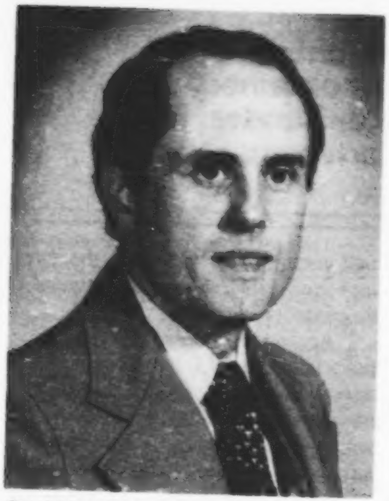
*Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.*

Part one of this article proposed a hypothetical situation in which an employee, identified as B, acting as a police informant, turned over to police incriminating records which belonged to A, her employer. Part one concluded that such conduct was lawful in that A gave B access to and control over the records by virtue of her employment duties. Since A voluntarily exposed criminal conduct to B in the form of documents, A retained no reasonable expectation of privacy in the records with respect to B. A was held to have misplaced his trust in B and to have assumed the risk that B might provide the records to the police. Inasmuch as A lacked a reasonable expectation of privacy, no search took place, and the fourth amendment was not implicated by B's conduct.

### Search By Consent

A footnote in *United States* v. *Ziperstein* suggests that an alternative argument can be made by the Government under circumstances wherein an employee-informant had access to and control over certain incriminating documents. In such cases, if a court were to reject the absence of reasonable expectation of privacy analysis set forth in part one of this article and characterize the employee's conduct as a search, the Government could argue that the employee-informant had the authority to consent to a search and seizure of the materials. Specifically, the seventh circuit in *Ziperstein* stated: "We also note that the government's use of this evidence can be justified under the Fourth Amendment on a consent theory."[25] The circuit court cited the U.S. Supreme Court's opinion in *United States* v. *Matlock*[26] as authority for the proposition that employees, like the pharmacist in *Ziperstein*, possess sufficient control over items relating to their employment to consent to their search.

In *Matlock*, the defendant was arrested by local police for robbery of a federally insured bank. The police obtained consent from the defendant's girlfriend to search a room he shared with her. The district court suppressed the evidence, holding that the Government could not produce sufficient admissible testimony that Matlock's paramour had actual authority to consent to the search. A Federal appellate court affirmed, and the Government appealed. The Supreme Court determined that the issue in the case was whether the evidence presented by the United States was legally sufficient for the Court to conclude that the police obtained from a third party voluntary consent to search. The Court observed that the Government is not limited to proving consent to search was obtained from the defendant, but may show such consent was received from a third party who possessed common authority or other sufficient relationship to the area or things searched. In a footnote, the Court defined common authority as:



*Special Agent Callahan*

> ". . . mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched."[27]

The Court found there was ample factual basis for the police to conclude that the defendant's girlfriend had common authority over the room she shared with the defendant, which gave her the ability to consent. She told the police she shared the room with the defendant and led the officers to the room, shared a dresser in the room with him, and identified clothing inside the room as hers. The decisions of the lower courts were reversed.

The rationale of *Matlock* was applied in the employer-employee context by the Supreme Judicial Court of Massachusetts in *Commonwealth* v. *Grasso*.[28] Grasso was suspected of selling untaxed cigarettes in his store. State authorities went to the store in an effort to confirm these suspicions. A clerk who was in control of the entire store permitted the officers to conduct a search after they informed him of the purpose of their visit. Untaxed cigarettes were discovered behind the store's counter which could not be seen from the public area of the store. Grasso was convicted of possession of untaxed cigarettes and appealed. The court affirmed the conviction and found that the store clerk had sufficient authority to consent to the search. The court explained that the items seized were located in an area accessible to the clerk and under his control.

Third party consent, obtained from one having common authority to furnish it, has been used in several cases to justify the Government's coming into possession of incriminating records. In *United States* v. *Antonelli Fireworks Co.*,[29] Antonelli, president of the corporation, was convicted of fraud in a U.S. district court. On appeal, he claimed that certain corporate records turned over to the FBI by the corporation's office manager, Simon, and later offered in evidence, should have been suppressed, since Simon was not in a position to consent on behalf of the corporation. The appellate court affirmed Antonelli's conviction, holding that the office manager was in sole control of the office and the records and clearly had the right to turn the records over to the FBI.

In *United States* v. *Curtis*,[30] a corporate office manager was held to have sufficient authority to allow State officials to examine and take with them corporate records which were ultimately instrumental in the conviction of a high-level company officer for mail fraud.

A more recent Federal decision is also instructive on this point. In *United States* v. *Allison*,[31] FBI Agents appeared at the offices of the Laborers International Union of North America, Local 1282, and were allowed to take with them certain union records which incriminated Allison, a union officer. The district court ordered the records suppressed, holding that Greer, the union's secretary-treasurer and records custodian, did not voluntarily

**"An employee-informant must have access to and control over the records and the place from which they are obtained in order to turn them over lawfully to the Government under either an absence of a reasonable expectation of privacy rationale or a consent theory."**

consent to the Government's taking of the records. On appeal, the order was reversed. The appellate court determined that the search was conducted on the authority of the consenting party, Greer, who was the person with legal custody of the records.

In the hypothetical situation, it seems clear that B, the employee, could lawfully turn over to police the documents which incriminate A, the employer, either because A has no expectation of privacy in the documents with respect to B or because B has sufficient common authority over the documents and the place they are stored to voluntarily consent to their search or seizure by the Government.

### Access and Control Critical

An employee-informant must have access to and control over the records and the place from which they are obtained in order to turn them over lawfully to the Government under either an absence of a reasonable expectation of privacy rationale or a consent theory. Suppose, for example, that the records are kept in a locked safe in A's office and B has access to and control over them only during normal business hours. Suppose further that B enters A's office after business hours and by means of a sophisticated device is able to enter the safe surreptitiously and take the documents. A's reasonable expectation of privacy with respect to a safe in his own office would likely defeat an assertion by the Government that the fourth amendment was inapplicable.

Consider altering the facts of the hypothetical. Suppose B's employment status is reduced and is limited to that of a messenger. Assume that A hands B a closed briefcase with instructions to deliver same to a third party. B suspects that it contains incriminating documents. Could B lawfully open the closed briefcase and turn over the incriminating papers to the police or consent to a police opening of the briefcase?

A recent decision of a Federal court in *United States* v. *Humphrey*[32] considers this issue. In *Humphrey*, the defendant furnished to an FBI informant a sealed envelope with instructions to deliver the envelope to certain individuals outside the United States. Instead, the informant delivered the envelope to the FBI. It was opened without a warrant. Evidence of espionage was found and seized. The district court ruled such warrantless conduct unlawful, in that the defendant had a reasonable expectation of privacy in the contents of a sealed envelope and this interest continued even after he furnished the envelope to the informant for delivery. The court rejected the Government's consent argument by holding that the warrantless opening of the sealed envelope exceeded the scope of the consent furnished to the informant. The informant arguably had common authority over the envelope itself, but had no right of access to its contents.

Applying this conclusion to the hypothetical case, if B had access to and control over the records during business hours, but after hours could obtain them only from A's private office safe, such conduct would likely violate the fourth amendment. Nor could this action be supported under a consent analysis because, although B would have common authority over the documents during regular working hours because of access and control, obtaining them from A's private office safe after normal working hours would require B to enter an area not commonly controlled, i.e., a place reserved for A's exclusive use.

### Plain View Seizures

Another argument that the Government might make to support B's taking of the incriminating documents in the original hypothetical is based upon the "plain view" doctrine. The plain view concept was examined by the Supreme Court in *Coolidge* v. *New Hampshire*.[33] Reduced to its basic terms, the plain view doctrine requires three conditions. First, the officer making the plain view discovery must be lawfully present in the place where the evidence is discovered. Second, the discovery of the evidence must be inadvertent. Finally, the item seized must be immediately apparent as evidence of a crime. The usefulness of this principle to support the legality of B's taking the documents in the original hypothetical is illustrated in *United States* v. *Baldwin*.[34]

In *Baldwin*, Hoing, an undercover police officer, was hired by Baldwin to act as his chauffeur. The defendant subsequently allowed the officer to move into his home and occupy a downstairs bedroom. Baldwin gave him free access to all parts of the house, including his bedroom. While staying in the house, Hoing observed and seized two samples of white powder from a table top in Baldwin's bedroom. He found a third sample of the white powder while cleaning the interior of Baldwin's car as part of his job as chauffeur. Hoing seized the samples because he suspected that the substance observed was cocaine. A fourth sample was seized from Baldwin's bedroom dresser drawer after Hoing was instructed to bring cocaine from the drawer to a nightclub. Baldwin was convicted of possession of cocaine. A Federal appellate court rejected Baldwin's claim that he never consented to the presence of a police spy in his home. The court explained that Baldwin's consent to the undercover officer's presence in his home and his unlimited access to the interior were not in any way vitiated by the officer's failure to disclose his status as a law enforcement officer. The court justified the various seizures of the cocaine by applying the plain view rationale.

Application of the plain view doctrine to the hypothetical is not without problems, however. Although only four Justices adhered to the inadvertent discovery requirement announced in *Coolidge,* that condition has since been widely accepted as a necessary part of the plain view doctrine.[35] However, since *Coolidge,* there has been disagreement in the lower courts over the meaning of the inadvertence requirement. The words of Justice Stewart in *Coolidge* are instructive on this point: "This Court has never permitted the legitimation of a planned warrantless seizure on plain view grounds."[36]

Most courts confronted with the inadvertence problem since *Coolidge* have concluded that it is permissible for the police to seize an item in plain view even though they suspect, prior to entry, that it might be found in an area they intend to enter. However, if police have probable cause to believe they will find an item in a place they can enter on other lawful grounds, a search warrant would be necessary, absent an emergency. Given the prior existence of probable cause, the plain view doctrine would likely be inapplicable.[37] In the hypothetical, a court could find that after B informed the police of her suspicions regarding A and what the records would disclose, probable cause as to the evidentiary nature of the records would exist. The inadvertent discovery requirement could not be met.

Finally, there exists the issue of whether an informant has the same authority as a law enforcement officer to make a plain view seizure. *United States* v. *Glassel*[38] is instructive on this point. In *Glassel,* an undercover police officer and an informant were invited into the defendant's home to purchase narcotics. After the defendant displayed narcotics to the officer, the informant left, purportedly to obtain cash. Other officers then entered the premises without knocking and announcing their purpose and authority. Cocaine was seized at this time and Glassel was convicted. On appeal, he argued that the entry of the other officers, in violation of a Federal knock and announce statute, tainted the subsequent seizure of the cocaine. In support of this conclusion, he cited *Sabbath* v. *United States,*[39] in which an informant was invited into the defendant's home and was present when Federal officers entered without complying with the Federal announcement statute. The Supreme Court concluded such entry was unlawful, and the evidence seized pursuant to it was declared inadmissible. In *Glassel,* the appellate court rejected Glassel's argument and distinguished the *Sabbath* case as follows:

> "In *Sabbath,* Jones (the informant) did not participate in the arrest or seizure, *nor was he authorized to do so.* He was merely the defendant's unfaithful cohort whose temporary role as 'agent' involved nothing more than being a stool pigeon."[40] (emphasis added)

By contrast, the court explained that the undercover officer in *Glassel* was a full-time narcotics officer who had authority to make arrests and seize evidence. Since the undercover officer was already lawfully present and was in constructive possession of the cocaine at the time of entry by other officers, the manner of entry was of no legal consequence. The *Glassel* case casts doubt on the authority of an informant to make a plain view seizure.

**"Contemplated use of this (informant technique) should include consideration of whether Federal or State privacy laws may limit or prohibit its application."**

### Embezzlement and Lack of Intent

In at least two recent cases which involved employees turning company records over to the Government, employers have characterized the takings as thefts.[41] This raises the question of whether the employee-informant or the police officer directing the source can be criminally liable for the conduct. This article has already examined the issue of whether an employee who has access to and control over documents in connection with his employment violates the fourth amendment by making those documents available to the police upon request of an officer. A majority of decisions supports the proposition that no violation of the fourth amendment occurs in this situation. However, there remains the question of whether a violation of applicable larceny or embezzlement statutes has occurred.

Embezzlement is generally taken to be the fraudulent or felonious conversion of property which has rightfully come into possession of the converter.[42] Embezzlement can occur when the defendant has been entrusted with the possession of the property in question.[43] One who has mere custody of property, as distinguished from legal possession, and feloniously appropriates the property to his own use is guilty of larceny. Possession sufficient for purposes of the distinction between embezzlement and larceny may exist where the accused is given considerable control over the property converted.[44] In the hypothetical case, B clearly had access to and control over the incriminating documents by virtue of an employment relationship, and thus any contemplated criminal action against B would take the form of an embezzlement charge. As a general rule, in order to constitute embezzlement, there must be criminal intent. Ordinarily, there can be no embezzlement of property belonging to another without a fraudulent intent.[45] Such intent has been held essential even though the statute defining the offense fails to declare it.[46] In the hypothetical case, B's intent was limited to assisting law enforcement in ferreting out criminal conduct, and B had no personal intent to deprive A of his property fraudulently. Given the foregoing, the likelihood of there being a successful prosecution against B or the police officer for embezzlement is remote.

### Federal-State Statutes May Bar Use of Procedure

In 1978, the U.S. Congress enacted into law the Right to Financial Privacy Act,[47] which restricts the right of employees in certain institutions covered by the act, such as banks, to turn over to Federal officers customer records covered in the act, unless the officer had legitimate authority under the act to obtain them. Similarly, other Federal statutes, such as the Federal Privacy Act of 1974[48] and the Tax Reform Act of 1976,[49] might operate to restrict or eliminate use of the investigative technique outlined in this article. States may have similar statutes prohibiting unauthorized dissemination of information in the possession of certain State agencies and private employers as well. Consideration of the investigative technique described in this article must include an analysis of whether any Federal or local statute exists which might limit or prohibit its use.

### Preference for a Search Warrant

Use of an informant to seize documents should be reserved for special situations. For example, where police have strong suspicion but lack probable cause, they might consider the procedure described herein. However, it should not be viewed as a routine alternative to a search warrant. The warrant should be obtained unless there is a compelling need for law enforcement to proceed without one.

Use of an informant to acquire some documents would be appropriate for the limited purpose of establishing probable cause to support issuance of a search warrant for a larger volume of incriminating records. This approach also could be of assistance when police possess probable cause to seize only a limited amount of records pursuant to a warrant but suspect the scope of the crime to be much broader. Premature execution of a search warrant in this instance could result in several undesirable consequences:

1) Alerting suspects to the presence of an informant in their midst, thus prompting them to become more circumspect and clandestine in their illegal activity;

2) Causing the removal or destruction of valuable evidence; and

3) Placing the safety of the informant in jeopardy.

Use of the informant technique will allow police the luxury of developing the case with the assistance of a well-placed source of information. It could result in penetration to the core of a pervasive conspiracy and may well lead to the identification of well-insulated conspirators and to the location of additional important evidence.

Finally, the decision to employ an informant for the purpose described above will also be affected by the risk of disclosing his identity at a future legal proceeding. An informant who plays a critical role in the seizure of evidence may be required to subsequently testify as to his role in an investigation.[50]

## Summary

1) As a general rule, an employer has a reasonable expectation of privacy from direct warrantless police intrusion into his business premises for the purpose of searching for incriminating records. Ordinarily, police cannot use an informant to accomplish what they themselves are prohibited from doing. However, the result is different when an employer has given to an employee access to and control over incriminating records. The employer has no reasonable expectation of privacy with respect to records he voluntarily exposes to the employee. The employer is held to have misplaced trust in the employee and to have assumed the risk that the employee might furnish the records to the police. In that event, no search takes place and the fourth amendment is inapplicable.

2) An alternative argument can be made that the employee has common authority over the incriminating records, sufficient to allow a consent to their seizure by police.

3) A separate argument involves the authority of an employee-informant to make a plain view seizure. This argument has inherent problems, namely, the inadvertent discovery requirement of the plain view doctrine and the questionable authority of an informant to seize evidence in plain view.

4) Lawful use of this investigative tool presupposes that an employee-informant has lawful access to and control over the records. If an employee enters a safe within the exclusive control of an employer to obtain the records, such conduct would likely violate the fourth amendment.

5) Successful prosecution of an informant or an officer for embezzlement is remote, since neither has the requisite intent to commit the offense.

6) Contemplated use of this procedure should include consideration of whether Federal or State privacy laws may limit or prohibit its application.

7) This technique should be reserved for extraordinary cases and not used as a routine substitute for a search warrant.

8) Because of the complex legal issues associated with this procedure, officers should discuss its possible use with the prosecutor or police legal adviser before adopting it as part of their investigative strategy. **FBI**

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**Footnotes**

[25] *Supra* note 23, at 290, note 3

[26] 415 U.S. 164 (1974)

[27] *Id.* at 171, note 7

[28] 375 Mass. 115, 375 N.E. 2d 706 (1978)

[29] 155 F.2d 631 (2d Cir. 1946), *cert. denied,* 329 U.S. 742 (1946).

[30] 537 F.2d 1091 (10th Cir. 1976), *cert. denied,* 429 U.S. 962 (1976).

[31] 619 F.2d 1254 (8th Cir. 1980).

[32] 456 F. Supp. 51 (E.D. Va. 1978), aff'd. on other grounds, 629 F.2d 908 (4th Cir. 1980).

[33] 403 U.S. 443 (1971).

[34] 621 F.2d 251 (6th Cir. 1980), *cert. denied,* 68 L.Ed.2d 244 (1981).

[35] Joseph R. Davis, "The Plain View Doctrine," *FBI Law Enforcement Bulletin,* vol. 48, No. 10, October 1979.

[36] *Supra* note 33, at 471, note 27.

[37] *Supra* note 35.

[38] 488 F.2d 143 (9th Cir. 1973), *cert. denied,* 416 U.S. 941 (1974).

[39] 391 U.S. 585 (1968).

[40] *Supra* note 38, at 145.

[41] *Supra* note 23; *Knoll Associates* v. *F.T.C.,* 397 F.2d 530 (7th Cir. 1968).

[42] 26 Am.Jur.2d 549.

[43] *Id.* at 552.

[44] *Id.* at 554.

[45] *Id.* at 570.

[46] *Id.*

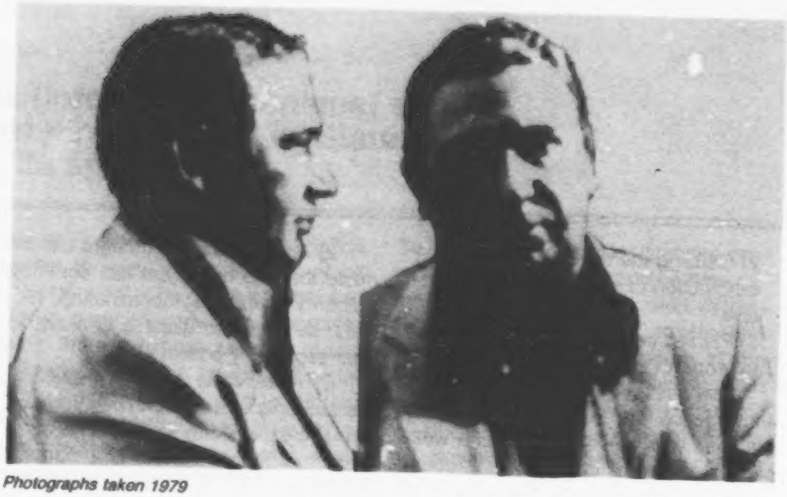
[47] 12 U.S.C. Secs. 3401-3422.

[48] 5 U.S.C. Sec. 552a. The Federal Privacy Act of 1974 was enacted by Congress in order to protect the privacy of individuals identified in information systems maintained by Federal agencies. The act regulates the collection, maintenance, use, and dissemination of information related to individuals by such agencies.

[49] 26 U.S.C. Sec. 6103(i)(1). As part of this act, Congress established a detailed procedure for Federal officers to follow in obtaining tax return information in nontax-related criminal investigations.

[50] *See Roviaro* v. *United States,* 353 U.S. 53 (1957).

# WANTED BY THE FBI



*Photographs taken 1979*

**Alphonse Carmine Persico**

Alphonse Carmine Persico, also known as A. Persico, Alphonse Persico, Alphonso Persico, Alley Boy Persico, Alley Boy, Allie Boy Persico, Allie Boy, Al, and Ally Boy

**Wanted for:**

Extortionate Credit Transactions-- Bond Default

**The Crime**

Persico is a reputed underboss of an organized crime family in Brooklyn, N.Y. He is being sought for failure to appear for sentencing after being convicted on multicounts of violating the extortionate credit transaction law. Persico has also been previously convicted of assault and contempt of court.

A Federal warrant was issued on June 23, 1980, in the Eastern District of New York, charging Persico with extortionate credit transactions and failure to appear.

**Description**

| | |
|---|---|
| Age | 52, born December 6, 1929, Brooklyn, N.Y. |
| Height | 6' to 6'2". |
| Weight | 215 pounds. |
| Build | Heavy. |
| Hair | Black gray. |
| Eyes | Brown. |
| Complexion | Olive. |
| Race | White. |
| Nationality | American. |
| Occupations | Carpetlayer, legal clerk, president of carpet installation firm, security consultant. |
| Scars & Marks | Burn scar on left cheek; tattoo: "AL" on right hand between thumb and forefinger. |
| Remarks | Persico has been convicted of murder, assault, and contempt of court. |
| Social Security No. Used | 072-22-1415. |
| FBI No. | 263 729 A. |

**Caution**

Persico has been known to carry a weapon in the past and should be considered armed and dangerous.

**Notify the FBI**

Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone number of which appears on the first page of most local directories.

**Classification Data:**

NCIC Classification:

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Fingerprint Classification:

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*Right index fingerprint*

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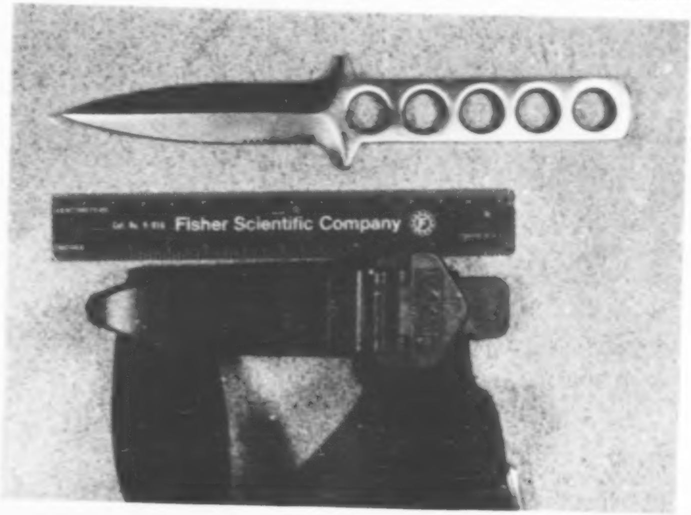
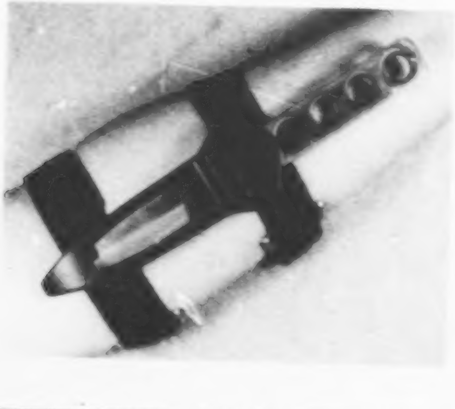
This concealable knife was confiscated during an investigation. The metal knife is approximately 7 inches long with a blade length of approximately 3½ inches. It is carried in a plastic case and can be fastened to a person's calf or forearm. If carried on the forearm, the owner can hit a catch, allowing the knife to slide down the sleeve into his hand.

*(Submitted by the Department of the Army)*





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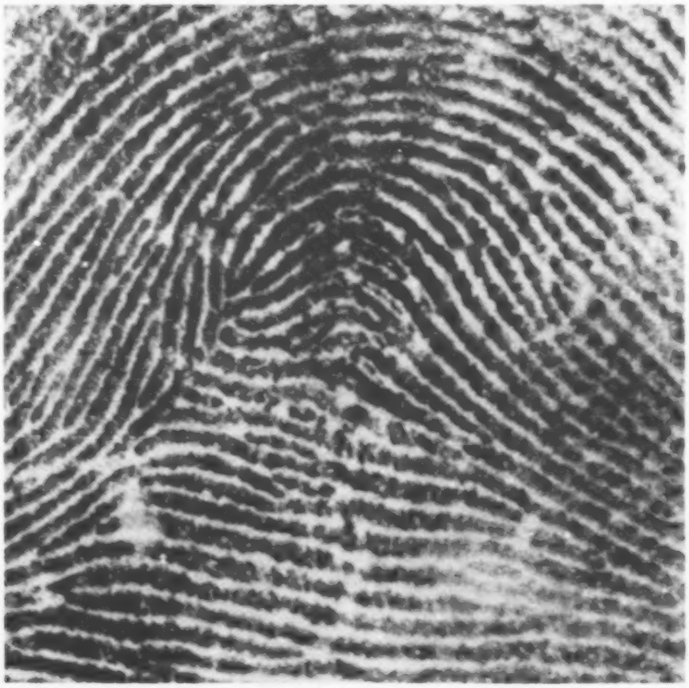

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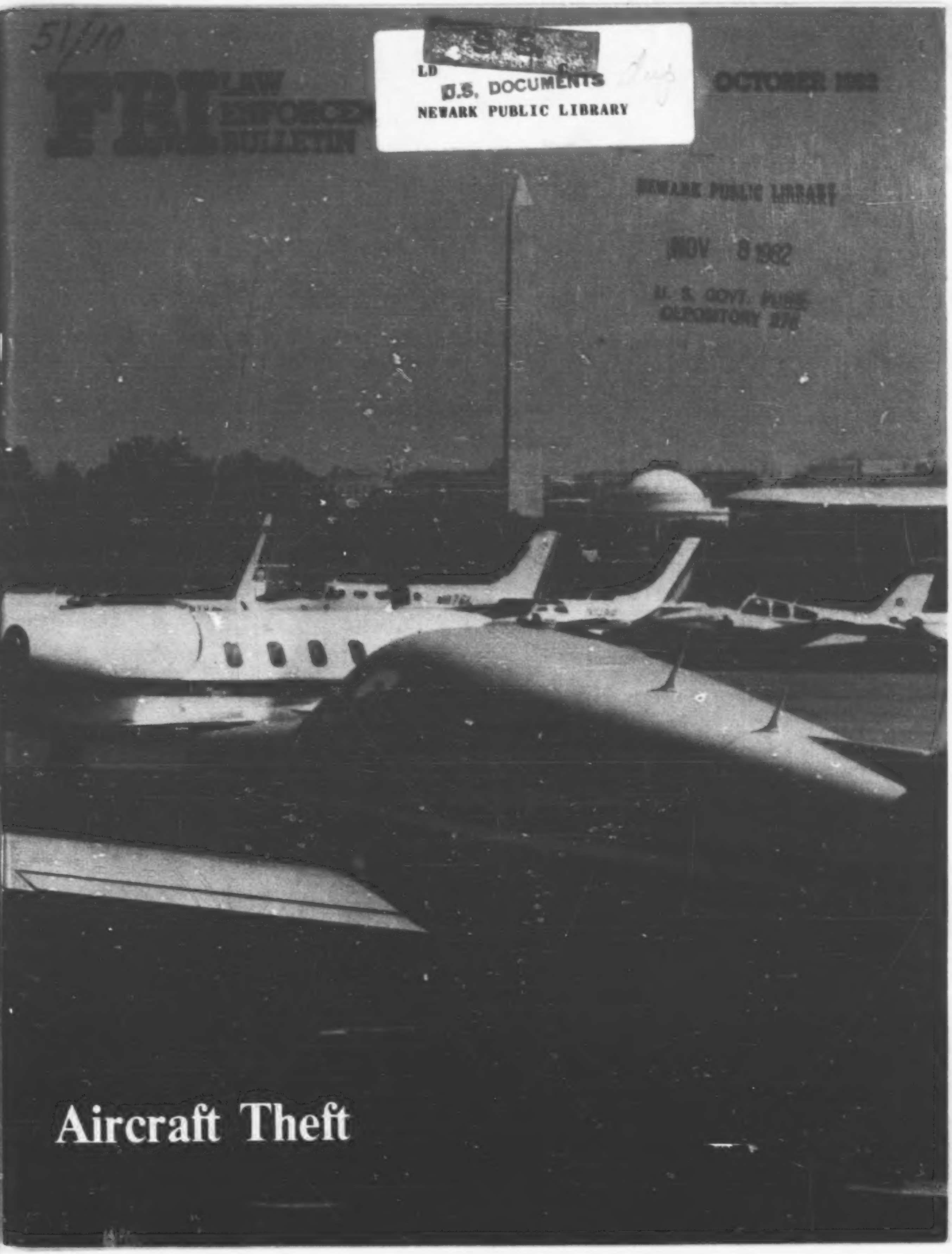

# Aircraft Theft

**FBI LAW ENFORCEMENT BULLETIN**

OCTOBER 1982, VOLUME 51, NUMBER 10

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Both aircraft owners and law enforcement personnel can take steps to minimize the problem of aircraft theft. See story page 2.

**Federal Bureau of Investigation**
**United States Department of Justice**
**Washington, D.C. 20535**

**William H. Webster, Director**

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through February 21, 1983.

Published by the Office of Congressional and Public Affairs,
Roger S. Young, *Assistant Director*

*Editor*—Thomas J. Deakin
*Assistant Editor*—Kathryn E. Sulewski
*Art Director*—Kevin J. Mulholland
*Writer/Editor*—Karen McCarron
*Production Manager*—Jeffrey L. Summers
*Reprints*—Mary Ellen Drotar

ISSN 0014-5688

USPS 383-310

# Director's Message

This month marks the beginning of the 51st year of publication for the FBI Law Enforcement Bulletin. Initially called, in 1932, "Fugitives Wanted by Police," the first issue of the Bulletin simply contained a listing of wanted persons. However, an article on explosives, reprinted from the St. Louis, Mo., Police Department training publication, appeared in the third issue, in November 1932. Subsequent issues featured articles on fingerprint evidence, ciphers, examination of metals, and glass fractures—all subjects that were beginning to be addressed by law enforcement in those early days of scientific crime detection. This led to the renaming of the publication in October 1935, when it officially became known as the FBI Law Enforcement Bulletin.

Over the years, the Bulletin took on a new direction and emphasis, perhaps more so in the 1980's than in any other decade, as law enforcement gained the hallmarks of a professional service. Readers can now benefit from articles on management techniques, personnel matters, special operations, legal developments, and computer management, as well as training, investigative techniques, current crime problems, forensic science developments, and state of the art training.

The Bulletin is still a "national periodical of interest and value in the field of law enforcement." This was the summation of a young lawyer, John Edgar Hoover, when he described the Bulletin in a 1935 Director's Message and wrote "the publication should provide a clearinghouse for police officials regarding successful police methods, a medium for the dissemination of important police information, and a comprehensive literature pertaining to the scientific methods in crime detection and criminal apprehension."

To observe this 50th anniversary, I would like to recall Director Clarence M. Kelley's Message just 5 years ago, that the Bulletin's most fundamental aspect has been "the remarkable degree of cooperative assistance that it has sustained in this and preceding years."

The thousands of articles contributed over the years by law enforcement personnel have amounted to a great, and valuable, contribution to the professionalization of the business of crime detection. To all these authors, may I offer the FBI's sincere thanks.

William H Webster

William H. Webster
*Director*
October 1, 1982

# Aircraft Theft

By
UDY C. WOOD, JR.
*Special Agent*
*National Crime Information Center*
*Federal Bureau of Investigation*
*Washington, D.C.*

*Special Agent Wood*

The rate of aircraft theft and theft of avionic equipment is increasing at an alarming rate in the United States. According to the Aircraft Owners and Pilots Association's International Aviation Theft Bureau (IATB), airplane thefts increased more than 217 percent between 1978 and 1980. (See fig. 1.) In January 1982 there were 347 stolen aircraft reports on file at the FBI's National Crime Information Center (NCIC). (See fig. 2.) These stolen aircraft represent a multimillion-dollar loss to insurance companies and members of the aviation community.

*Figure 1*

**Aircraft Thefts/Recovery Statistics 1978 to 1981**

| YEAR | THEFTS | RECOVERED/ LOCATED |
|---|---|---|
| 1978 | 76 | 30 |
| 1979 | 162 | 102 |
| 1980 | 241 | 115 |
| 1981 | 214 | 148 |

Total value of aircraft stolen in 1980—$20.7 million

Total value of aircraft stolen in 1981—$25 million

*Statistics compiled by Aircraft Owners and Pilot's Association International Aviation Theft Bureau.

Law enforcement officials nationwide are acutely aware of the increased use of stolen aircraft in the international smuggling of narcotics. The modern-day aircraft smuggler is not restricted by roads or ports and can fly his illegal cargo to any part of the country.

The El Paso Intelligence Center (EPIC) in El Paso, Tex., a federally administered intelligence support facility for law enforcement, estimates that more than half of all aircraft thefts in the United States during 1980 and 1981 were drug-related. Of the aircraft recovered during this time period, more than 50 percent were recovered outside of the State where the theft occurred. More significant is the fact that 80 percent of these same recovered aircraft were determined to be involved in drug-related cases.[1]

A comparison of EPIC's drug-related aircraft theft and general aviation smuggling problem areas with NCIC's stolen aircraft theft entries reveals an interesting parallel. States with high aircraft theft statistics also have a high drug-related aircraft theft/aircraft smuggling ratio.[2] (See fig. 3.)

## Aircraft Thieves

Airplanes are relatively easy to steal as long as the thief knows how to fly and is familiar with airport procedures. Ignition systems can be hot-wired, and in many cases, the owner leaves the keys in the aircraft or at local service facilities located on the airfield. After starting the aircraft, the thief simply contacts the airport control tower to advise them that he is ready for takeoff. If, during the flight to his destination, the thief is required by Federal Aviation Administration (FAA)

*Figure 2*

**Breakdown of Stolen Aircraft by State as of January 1, 1982**

| | | | |
|---|---|---|---|
| Alabama | 1 | Missouri | 2 |
| Alaska | 6 | Nebraska | 1 |
| Arizona | 30 | Nevada | 8 |
| Arkansas | 2 | New Jersey | 2 |
| California | 62 | New Mexico | 10 |
| Colorado | 4 | New York | 8 |
| Florida | 77 | North Carolina | 6 |
| Georgia | 9 | Ohio | 3 |
| Idaho | 2 | Oklahoma | 7 |
| Illinois | 5 | Oregon | 1 |
| Indiana | 9 | Pennsylvania | 5 |
| Kansas | 2 | Rhode Island | 1 |
| Kentucky | 2 | South Carolina | 3 |
| Louisiana | 10 | Tennessee | 5 |
| Maine | 1 | Texas | 40 |
| Massachusetts | 2 | Utah | 1 |
| Michigan | 4 | Virginia | 1 |
| Minnesota | 2 | Washington | 2 |
| Mississippi | 2 | Wisconsin | 5 |
| | | All others | 2 |

Total aircraft on file—345.

regulations to make additional radio contacts, he simply provides the reporting station with a false identification number and continues his flight.

### Avionic Thefts

An additional area of aircraft-related thefts is the loss of avionic equipment. Avionics are the radios, navigation equipment, radar, and other electronic components used in the safe operation and navigation of the aircraft. This type of theft alone results in multimillion-dollar losses each year.

The avionic thief, unlike the aircraft thief, does not need to fly the stolen item away. With nothing more than simple handtools, he can easily break into the aircraft, and in a short period of time, remove the desired electrical component. The sophisticated avionic equipment manufactured today (some items are no larger than a shoebox) can cost more than $10,000. Thieves have little trouble fencing these goods and often steal preordered items for their buyers. A popular scheme is to steal all the radios from a particular type of aircraft and then steal the radios from another aircraft of the same type, replacing them with the radios stolen from the first airplane. The owner of the second airplane may never know the radios he is using are not his own. The owner of the first aircraft will report the theft and provide the investigating officer with the serial numbers, if he knows them. He will stand very little chance of ever recovering the stolen property. The thief sells the second set of radios to an innocent buyer with little fear of being discovered, since the original owner will probably never be aware that his radios were stolen.

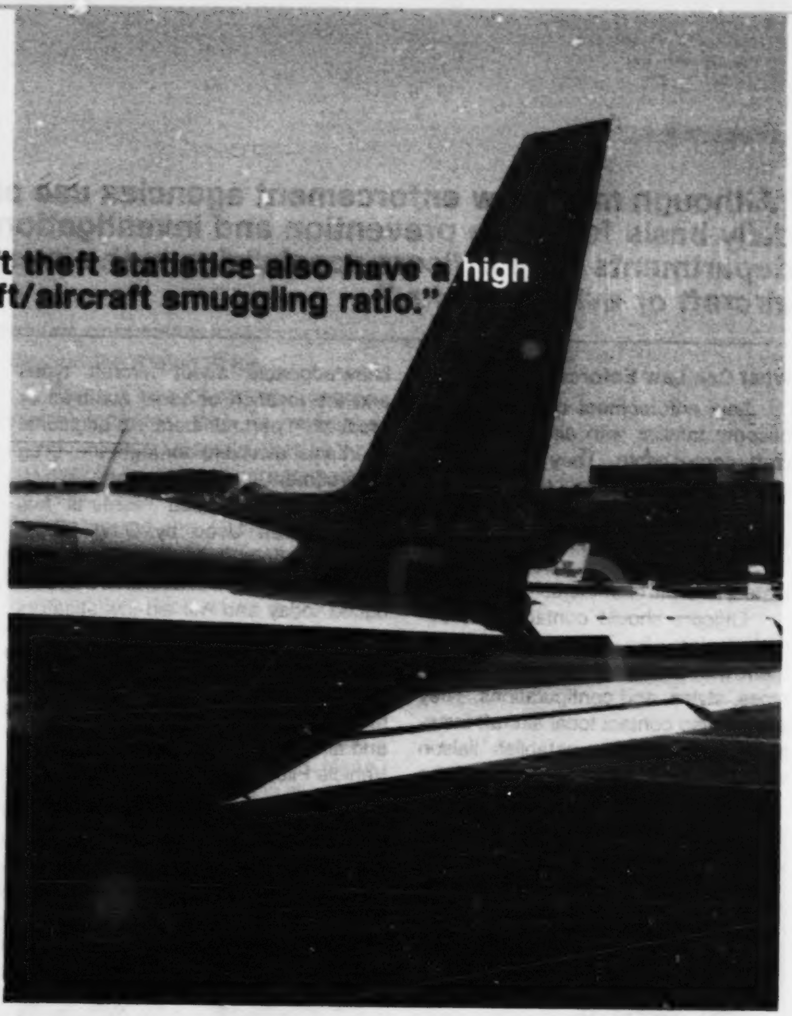
### Law Enforcement Problems

Although many law enforcement agencies use aircraft on a daily basis for crime prevention and investigation, few departments have officers specializing in the investigation of aircraft or avionic thefts. Frequently, the only information provided to the officer taking the theft report is the aircraft registration number, which is commonly referred to as the "N" number. This is the letter "N" followed by either a series of letters or numbers or a combination of both. The letter "N" must be the first character in all U.S.-issued registration numbers, which usually appear on each side of the rear section of the aircraft or on the vertical fin (the vertical part of the tail assembly). These numbers can be easily altered or painted over, precluding quick visual identification. In addition to "N" numbers, aircraft also have individual serial numbers, much like vehicle identification numbers (VIN). This aircraft identification number (serial number) is recorded on a data plate that must be attached to the body of the aircraft. The data plate, which is fireproof, will usually list the aircraft's manufacturer, model and serial number. The location of the aircraft data plate is left to the discretion of the manufacturer.

The FBI, as manager of NCIC, maintains a nationwide online computer/telecommunication system which contains over 9 million records for stolen property, wanted persons, miss-

*Figure 3*

| Aircraft Thefts | Drug-Related Aircraft Thefts | General Aviation Smuggling Problem Areas |
|---|---|---|
| 1. Florida | Florida | Florida |
| 2. California | California | Texas |
| 3. Texas | Arizona | Georgia |
| 4. Arizona | Texas | California |
| 5. New Mexico | Georgia | New Mexico |
| 6. Georgia | New Mexico | Arizona |



**"States with high aircraft theft statistics also have a high drug-related aircraft theft/aircraft smuggling ratio."**

ing persons, and criminal histories that are instantaneously available to more than 60,000 local, State, and Federal criminal justice agencies throughout the United States, Puerto Rico, U.S. Virgin Islands, and Canada. Stolen aircraft are listed in the NCIC Vehicle File; stolen avionics are listed in the NCIC Article File.

### Theft Prevention

Aircraft owners can take the following steps to assist in the prevention of aircraft theft:

1) If the aircraft cannot be stored in a locked hanger, it should be parked in a well-lighted and secure area of the airfield.
2) Aircraft tiedown straps (used to secure the aircraft to the parking spot in case of high winds or prop wash) should be a metal cable of sufficient strength to discourage cutting.
3) Keys should not be left in the aircraft. If left with a local service facility or rental agency, insure that they are locked in a secure place when not in use.
4) Antitheft devices, such as wheel locks or other items which immobilize the aircraft should be used.
5) Owners should have a complete list of all serial numbered items on the aircraft (engine, avionics, and other components). This list should be kept in a secure place away from the aircraft.
6) Aircraft logbooks are a wealth of information for stolen aircraft investigations, containing such things as aircraft modifications, etc. There should either be a separate copy of the logbook or the original should be stored away from the aircraft.
7) Owner identification numbers (social security numbers) can be engraved on components that have removable serial number plates. Business cards can be hidden in doors, under carpets, in seats, or other areas in the aircraft as long as they do not restrict the movement of flight controls.
8) Radios and navigation equipment should be checked regularly to insure that they have not been switched.
9) A current color photograph of the aircraft should be kept. This will be a valuable aid to the investigating officer in the event the aircraft is stolen. The paint color and scheme may be the quickest way to locate the aircraft if the "N" numbers have been changed.
10) When a theft is discovered, a local law enforcement agency, not the FAA, should be contacted. The FAA does not have jurisdiction in aircraft or avionic thefts.

**"Although many law enforcement agencies use aircraft on a daily basis for crime prevention and investigation, few departments have officers specializing in the investigation of aircraft or avionic thefts."**

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### What Can Law Enforcement Do?

Law enforcement officers should become familiar with aircraft and aircraft components. They should visit aircraft manufacturing plants in their area and ask them to provide information regarding the location of aircraft "N" numbers, serial numbers, data plates, and part numbers.

Officers should contact local aircraft dealers who will be able to supply them with brochures depicting aircraft types, styles, and configurations. They should also contact local aircraft insurance companies to establish liaison with the field adjuster, who will be knowledgeable about aircraft types and the location of serial numbers or production part numbers. An additional source is available through the Drug Enforcement Administration, which prints a booklet titled "General Aviation Aircraft Used by Drug Smugglers." This booklet contains photographs of most aircraft being produced today and will aid investigators in the quick visual identification of specific aircraft types.

Stolen aircraft data should be immediately entered into NCIC. Aircraft and aircraft engines are entered in the Vehicle File; aircraft parts and avionics are entered in the Article File.

Nationwide stolen aircraft alerts may be placed by providing the local FAA General Aviation District Office (GADO) or FAA Flight Service Station with descriptive information of the aircraft. The aircraft alert is then forwarded to all FAA control towers and aircraft controllers. FAA can also provide law enforcement with a microfiche printout of the ownership history of all aircraft registered in the United States.

Although aircraft-related thefts decreased by 13 percent in 1981, the value of the stolen aircraft increased by $4.3 million, primarily because two jet aircraft with a combined value of over $7 million were stolen. Both jet aircrafts were recovered.

Between January 1978, and January 1981, 693 aircraft were reported stolen. A total of 395 aircraft—57 percent—have been recovered or located. (See fig. 1.) Aircraft that have been verified as seized in foreign countries and have not yet been returned to the registered owners or insurance companies are listed as being "located."

Owners of aircraft should be educated in ways to prevent the theft of their property. It is also up to law enforcement personnel to educate themselves in the area of aviation equipment. Through this combined effort, progress may be made in the fight against aircraft theft. **FBI**

# Leadership and Transformation

By
ARNOLD R. GERARDO*
*Special Agent*
*Federal Bureau of Investigation*
*Washington, D.C.*

**Special Agent Gerardo was formerly assigned to the Management Science Unit, FBI Academy, Quantico, Va.*

We are currently living at a time when the stable state of social systems has been lost. Views and ideologies of occupations, organizations, and traditional institutions are experiencing perpetual transformation. Law enforcement institutions are no exception in terms of change and should not be exempt from scrutiny if they are to fulfill the needs of a complex society. We should not, however, be discouraged by the complexity of social changes, for as Donald A. Schon says, "No established institution in society now perceives itself as adequate to the challenges that face it."[1] We should, instead, acknowledge and accept the need for change, develop systems that deal effectively with the rapidity of change, and provide for leaders who are willing to meet the challenges of complexity.

This article explores the changes and transformations occurring in law enforcement agencies as a result of the loss of the stable state, examines what causes these changes, and discusses the managerial traits necessary for future law enforcement leaders to deal with change. Finally, this article examines one specific managerial tool, situational leadership, developed by Paul Hersey and Kenneth Blanchard, which provides a situation-specific method for managing while working within a complex, changing environment.

## Beyond the Stable State

Schon's idea of dynamic conservatism indicates that organizations strive to maintain a stable state as long as possible by minimally accommodating new ideas.[2] As an organization moves beyond the stable state and begins to accept change, the driving force behind the change begins to lose its momentum. Momentum is gradually dissipated as an idea reaches a satisfactory level of acceptance and the system assimilates the change. The new idea becomes, then, a part of the stable state and replaces the old idea.

Schon further states that ideas that produce change travel in clusters.[3] While only a portion of these ideas are successfully used, they can still bring about substantial organizational change and produce a significant rippling effect and concomitant anxiety throughout the system. The greatest anxiety develops in those employees who are close to the change process but have no input into the process. The anxiety level drops in proportion to the individual's distance from the center of change.

Responses in law enforcement organizations to the loss of the stable state have been mixed. One negative response is sometimes voiced as a desire by leadership to return to "the way it used to be."[4] Another is what Schon calls "mindlessness,"[5] which is the avoidance of the dreaded reality of the present. These negative responses only undermine the purpose and the functioning of the agency. Positive responses, on the other hand, allow for creative solutions to new problems. Future leaders must respond in an optimistic and positive manner to change in order to deal effectively with the transformation. They must accept that change is inevitable, recognize the transformation, and realize the need to develop new tools by which to manage the transformation.

*Special Agent Gerardo*

## Transformation

Transformation takes place in law enforcement, as in other agencies, for many reasons. Post-Watergate morality, societal expectations, accountability for expenditures, technological advances, diversity of values among employees, and scarcity of resources contribute to a sense of loss of a stable state in the organization.

Some managers find themselves at odds with the values they see prevalent in younger employees. A manager must understand, however, that diverse value systems are representative of the population he serves. He must, as a leader, learn to understand the varied value systems in order to manage more effectively within this ever-changing environment.

The new employee, whether employed by law enforcement or any other organization, is motivated by a multitude of factors and looks at employment quite differently from the manager. Today's new employee shops for a job, takes a look at wages and short-term benefits, and makes comparisons from one job to another. He leaves one agency for another if his personal needs are better met. This job transience can result in a lack of commitment that has been evident in many organizations. As Arnold Deutsch explains, "Never before have so many asked so much for doing so little."[6] This concept, known as the entitlement theory, is defined " . . . as the perception that one is entitled to some things he or she does not have to work for."[7]

Employees have become very independent and find protection in civil service regulations, affirmative action programs, new personnel practices, and the alternatives civil litigation provides. This sense of independence has created and continues to create serious management problems when a leader fails to use appropriate leadership styles. Managers must be aware that their styles of leadership need to take into account these varied employee value systems as part of the total working environment. Therefore, future leaders need to understand the changing values of employees. In addition, they need to possess specific managerial attributes to use leadership tools effectively.

## The Future Leader

According to Harlan Cleveland in his book, *The Future Executive*, the complexity of modern organizational systems is diffusing the opportunity to lead and is intensifying the demands for effective leadership.[8] Cleveland states that as organizations become more complex, leaders must increase the number of persons consulted in the decisionmaking process. This requires certain demonstrated managerial attributes.

Effective leaders have particular attributes according to Cleveland. The effective leader:

1) Always has a great tolerance for ambiguity;
2) Makes sense of what appears to be complex and enjoys working in a complex environment;
3) Is intellectual and possesses more general rather than specialized experience;
4) Provides a forum for open and diverse discussion and consequently receives an

**"An integral part of the situational leadership theory . . . is the relationship between the variables within the leader, the follower, and the given situation."**

abundance of data to use in his decisionmaking process; and

5) Adapts well and handles the tensions that arise in this open climate.

From Cleveland's point of view, the nature of future leadership is its lack of visibility. The leader finds satisfaction in internalizing the fact that he does a commendable job. A leader with these attributes is receptive, then, and employs managerial tools to meet the needs of his everchanging organization.

### Managerial Tools: Situational Leadership

One tool that can be useful to an effective leader is Hersey and Blanchard's "situational leadership theory." According to these two authors, "Leadership is the process of influencing the activities of an individual or group in efforts toward goal achievement in a given situation."[9] An integral part of the situational leadership theory, therefore, is the relationship between the variables within the leader, the follower, and the given situation. Situational leadership affords the manager the latitude to be flexible in his leadership styles and skills in order to vary his behavior. "If the needs and motives of his subordinates are different, they must be treated differently."[10]

Experience shows that the acceptance of a leader by a group or an individual is paramount in determining the leader's effectiveness. A follower accepts or rejects the leader and therefore determines the level of personal power the leader has. Even though the leader possesses position power, he will be totally effective only if his followers accept him, award him personal power, and thus produce at successful levels in both quality and quantity of work. Situational leadership, therefore, places emphasis on the relationship of the leader to his followers. This requires that the leader be aware of the maturity levels of his followers, of the various styles of leadership he can employ, and of the impact of developmental and regressive cycles on his leadership.

### Maturity of Followers

The situational leadership model focuses on the maturity of the followers. Maturity is defined within the model as "the capacity to set high but attainable goals, willingness and ability to take responsibility, and education and/or experience of an individual or group."[11]

The leader must consider these maturity variables for each employee in each assigned task. For example, a police officer assigned to an investigative detail may possess few investigative skills, but may possess many other skills. He is mature in a general sense, but immature in terms of investigative skills. Not only must the leader assess the maturity level of each individual employee, but also the maturity of the group as a whole. An example is the assignment of several officers possessing different maturity levels to the same surveillance. The complexity of their specific assignment must be correlated to their individual skills.

Maturity is composed of two factors—willingness (motivation) and ability (competence). Evaluation of employees requires that the leader assess both maturity factors for each employee. There are a total of four combinations of the two factors, identified as follows:

M1 = followers are neither willing nor able to take responsibility;
M2 = followers are willing but not able to take responsibility;
M3 = followers are able but not willing to take responsibility; and
M4 = followers are willing and able to take responsibility.

The maturity levels of followers, therefore, comprise a range from M1 to M4, with M1 being low maturity level, M4 being high maturity level, and M2 and M3 being considered moderate maturity levels. (See fig. 1.)

*Figure 1*

| High | Moderate | | Low |
|---|---|---|---|
| M4 | M3 | M2 | M1 |
| Mature | | | Immature |

### Task Behavior and Relationship Behavior

In addition to maturity levels, the situational leadership model "is based on a curvilinear relationship between task behavior and relationship behavior and maturity."[12] Task behavior is the extent to which leaders organize and define the roles of the members of their group (followers) and explain what activities each is to do and when, where, and how to do it. Relationship behavior is the extent to which leaders maintain personal relationships between themselves and members of their group (followers) by opening up channels of communication, providing socioemotional support and "psychological strokes," and facilitating behaviors.[13]

Upon determining the maturity level of the follower or group, the leader

> **"Employing effective leadership styles at all levels of an organization can be a significant factor in the accomplishment of its goals."**

employs a specific leadership style. As the maturity level of the follower increases in a given task, the leader should begin reducing task behavior and increasing relationship behavior until the follower has reached a moderate level of maturity. As the follower moves into and above the high moderate level of maturity, the leader decreases both his task behavior and relationship behavior. As the maturity level of the follower moves from immature to mature, the leader must select an appropriate leadership style. Situational leadership theory describes four leadership styles comparable to the four maturity levels.

### Leadership Styles

Situational leadership divides effective leadership into quadrants. These four areas are defined according to a correlation between task behavior and relationship behavior. Labeling the four leadership styles is useful for quick diagnostic judgments.

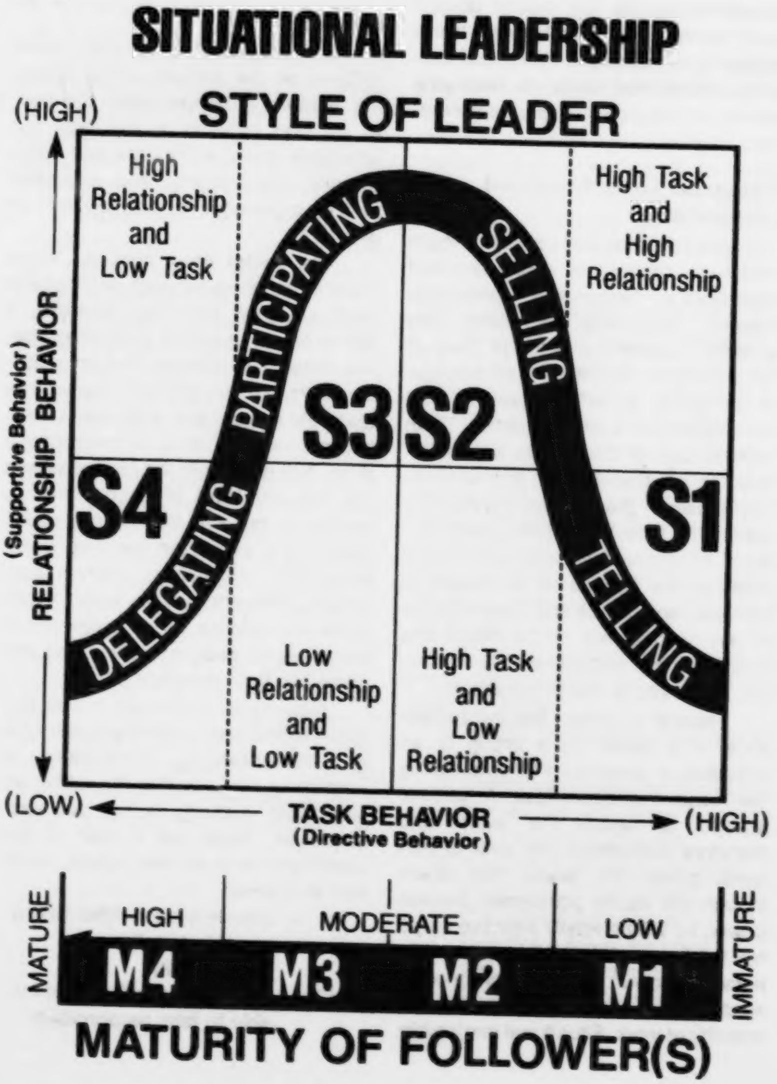
**High Task/Low Relationship** Behavior (S1) is referred to as "telling" because this style is characterized by one-way communication. The leader defines the roles of followers and tells them what, when, and how to do various tasks.

**High Task/Low Relationship** Behavior (S2) is referred to as "selling" because most of the direction is still provided by the leader. The leader attempts through two-way communication and socioemotional support to get the followers to accept psychologically decisions that must be made.

**High Relationship/Low Task** Behavior (S3) is called "participating" because the leader and followers share in decisionmaking through two-way communication. The leader provides much facilitating behavior since he has determined that the followers possess the ability and knowledge to perform the task.

**Low Relationship/Low Task** Behavior (S4) is labeled "delegating" because the leader lets the followers "run their own show."

*Figure 2*


SITUATIONAL LEADERSHIP
STYLE OF LEADER
(HIGH)
High Relationship and Low Task
High Task and High Relationship
PARTICIPATING
SELLING
S3
S2
S4
S1
DELEGATING
TELLING
Low Relationship and Low Task
High Task and Low Relationship
RELATIONSHIP BEHAVIOR
(Supportive Behavior)
(LOW)
TASK BEHAVIOR
(Directive Behavior)
(HIGH)
MATURE
HIGH
MODERATE
LOW
IMMATURE
M4
M3
M2
M1
MATURITY OF FOLLOWER(S)

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Because the followers are high in both task and psychological maturity, the leader applies only general supervision.

The leader, then, must select the appropriate style (S1 to S4) to suit the maturity level(s) (M1 to M4) of his followers. The diagram illustrates how this selection process works. By drawing a 90° angle from the appropriate point on the curvilinear continuum (the task/relationship correlation), the leader can determine the appropriate style. The quadrant in which the right angle and the curvilinear continuum intersect is the appropriate leadership style for that follower in that task. (See fig. 2.)

### Developmental Cycle

The situational leadership diagram illustrates the process of identifying the maturity levels of followers and determining the most effective leadership style in a given situation. What can a leader do, however, when he identifies the maturity level of followers to be M1, not ~~willing or~~ able to perform the task? The leader must then select from various alternative methods to develop the relevant task maturity of the individual. This approach is known as the "developmental cycle."[14]

In developing the maturity of an individual or group, the leader must take a risk. He must delegate more responsibility and immediately reward any progress. Development, therefore, is a two-step process: First, "a reduction in structure (task behavior), and second, if adequate performance follows, an increase in socioemotional support (relationship behavior)."[15] Development must occur in almost all tasks that are assigned to an individual, since his maturity level can vary depending on the task itself.

As the development of the follower progresses in the continuum to the high point of the curvilinear function (from S2 to S3), the process changes. At this point, the leader begins to reduce structure as well as socioemotional support. At this stage, the leader depends on the complexity of the task assigned and the performance potential of the individual or group in making the job assignment.

### The Regressive Cycle

What happens, however, when an employee shows less maturity than he previously exhibited in his job? This condition, called the "regressive cycle," occurs when an individual or group begins to behave in a less mature manner than in the past. A decrease in maturity is generally attributed to "high strength competing responses" in the environment.[16] Situations or forces beyond the work environment, such as family or community problems, may begin to affect a follower's work performance. Even though the work situation has not changed, the employee's performance may alter drastically.

For example, this cycle may occur with a model employee who is highly motivated and a high achiever. Not only is he an excellent employee, but he also has an outstanding personal life. The leader may have been employing the "delegation" style effectively. Suddenly, the employee has a serious personal problem, and the quantity and quality of his work begin to decline. A nonsituational manager may take the attitude, "Let's give him time and allow him to solve his personal problem." Hersey and Blanchard believe that what the employee really needs is a little more structure and direction, as well as significant increases in socioemotional support. The leader needs to change his leadership style from a delegation mode to a participative mode. Once the regression appears to subside and the maturity level is stable and begins to improve, the leader uses the development cycle to reorient his follower.

### Conclusion

This overview of situational leadership is presented in an attempt to reinforce the existing need for police executives to use all available tools in managing their organizations effectively. Employing effective leadership styles at all levels of an organization can be a significant factor in the accomplishment of its goals. As society and employee values change, agencies are forced to move from well-established, stable organizational and managerial states. In turn, managers must learn to adapt their styles and to use varied managerial tools in order to become more effective leaders. **FBI**

**Footnotes**

[1] Donald A. Schon, *Beyond the Stable State* (New York: W.W. Norton and Company, Inc., 1971), p. 17.

[2] Ibid., p. 31.

[3] Ibid., p. 15.

[4] Ibid., p. 28.

[5] Ibid., p. 29.

[6] Arnold R. Deutsch, *The Human Resources Revolution* (New York: McGraw-Hill Book Co., 1979), p. 57.

[7] *The Washington Post*, Parade Magazine, November 25, 1979, p. 27.

[8] Harlan Cleveland, *The Future Executive* (New York: Harper and Row Publishers, 1972), p. 5.

[9] Paul Hersey and Kenneth A. Blanchard, *Management of Organizational Behavior: Utilizing Human Resources*, 3d ed. (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1977), p. 84.

[10] Ibid., p. 159.

[11] Ibid., p. 161.

[12] Ibid., p. 161.

[13] Ibid., pp. 103–104.

[14] Ibid., p. 194.

[15] Ibid., p. 195.

[16] Ibid., p. 200.

# Outlaw Motorcyclists
## A Problem for Police

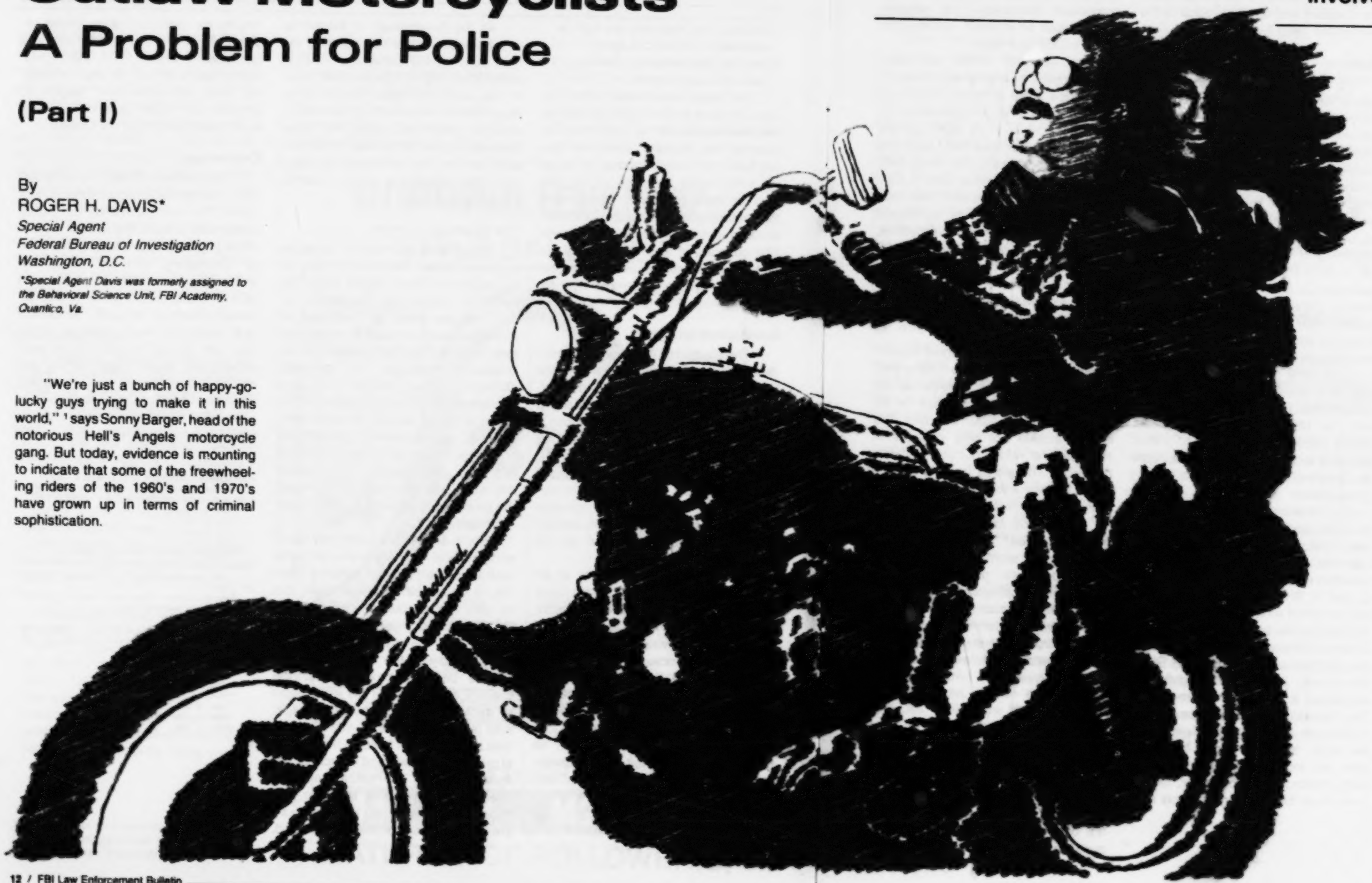
## (Part I)

By
ROGER H. DAVIS*
*Special Agent*
*Federal Bureau of Investigation*
*Washington, D.C.*

**Special Agent Davis was formerly assigned to the Behavioral Science Unit, FBI Academy, Quantico, Va.*

"We're just a bunch of happy-go-lucky guys trying to make it in this world,"[1] says Sonny Barger, head of the notorious Hell's Angels motorcycle gang. But today, evidence is mounting to indicate that some of the freewheeling riders of the 1960's and 1970's have grown up in terms of criminal sophistication.

**"The level of criminal involvement of persons connected with these adult gangs in the United States and Canada has influenced law enforcement officials to take a harder look at organized gang involvement in crime."**



With a national law enforcement focus directed more and more toward criminal violence, outlaw motorcycle gangs have gained increasing national attention in recent years. According to Pennsylvania Congressman Robert Walker, "The problem of motorcycle gangs is pervasive and growing. They pose a serious threat to our society. . . ."[2]

The level of criminal involvement of persons connected with these adult gangs in the United States and Canada has influenced law enforcement officials to take a harder look at organized gang involvement in crime. FBI investigations of the activities of some members of major motorcycle gangs in the United States have confirmed a deepening gang involvement in narcotics manufacturing and distribution, prostitution, weapons-related violations, extortion, murder, arson-for-hire, pornography, protection rackets, loan sharking, interstate transportation of stolen property and stolen motor vehicles, insurance fraud, and obstruction of justice.

The amount of criminal activity is alarming. Gang members are thriving on illegal profits reaped from their involvement in criminal enterprises. Law enforcement officers conducting gang investigations see these groups as posing complex criminal problems. Motorcycle gang members are now investing money gained from illegal enterprises into legitimate business ventures. Working relationships with other criminal groups have surfaced, and instances have been reported of motorcycle gang members accepting murder contracts, strong-arming business competitors, and being used as enforcers in collecting gambling debts.

*Special Agent Davis*

Complex violations committed by motorcycle gang members demand a deeper knowledge of group behavior. In order to be effective in gang investigations, law enforcement agencies must not only commit resources to intelligence analysis but also understand the structure and characteristics of the motorcycle gang.[3]

## History

To understand the changing nature of law enforcement problems involving motorcycle gangs, it is important to know a brief history of these gangs in America. Many of the outlaw groups started as recreational groups, but all have drawn status and structure from the Hell's Angels. Hunter Thompson, who has written much about the Hell's Angels, traced the beginning of the gang to groups like the POBOBS[4] and the Market Street Commandos. Both groups were said to include persons drawn together in loosely knit gatherings of individuals sharing a comparatively rare interest in motorcycles.[5]

The early group of Hell's Angels was only one of several motorcycle clubs active between the late 1940's and the 1960's. Several key media events brought the Angels to public attention and provided the media boost which propelled them toward a national reputation.

In the summer of 1947, in Hollister, Calif., and later in the fall in Riverside, Calif., thousands of motorcyclists gathered for motorcycle runs which ended in rioting, destruction of property, and in Riverside, two deaths. The events posed an awesome crowd control task for the small number of police officers in these two communities. In the summer of 1948, again in Riverside, Calif., 5,000 cyclists gathered, and again, the event turned into a riot. The Riverside police chief blamed this occurrence on visiting "outlaws," and the term "outlaws" began to be applied to individuals connected with some motorcycle clubs. Later, movies were made based upon incidents similar to the Hollister and Riverside events. Probably the most publicized of the movies was "The Wild Ones," in which bikers were portrayed as modern-day Robin Hoods seeking revenge on a world that did them wrong. This and several other similar movies romanticized motorcycle club behavior and sparked an interest, drawing others to motorcycle clubs.

Through the 1950's and early 1960's, police problems with motorcycle groups were primarily connected with controlling large gatherings. In July 1965, however, a rape incident occurred that changed the future role of the Hell's Angels. The gang held their annual rally at Bass Lake in California. Although the incident was relatively typical of problems connected with large gatherings of motorcyclists, media coverage primed the public for an incident and provided an "orgy of publicity that gave long dormant Hell's Angels eighteen years worth of exposure in six months and it naturally went to their heads."[6]

This creation of a national interest in motorcycle gangs in the 1960's was, in large part, a media phenomenon. Social scientists have identified the impact the media has upon behavior. The effects include not only changes in attitudes and values but also imitative behavior.[7] The media boost given the Hell's Angels encouraged similar behavior in other motorcycle gangs.

Many gang members are now in their midthirties,[8] and as the gangs matured, gang problems also changed. Police problems posed by outlaw gangs can be categorized into a number of areas, including crowd control, community fear, territorial battles for club dominance, rivalry over the control of narcotics and vice trade, and crime conspiracies.

## Crowd Control

The frequent migration of gang members to rallies, such as annual Labor Day and Fourth of July runs, continue to draw police attention. Police agencies are spending valuable man-hours, both in planning and control of these large gatherings and in applying preventive measures to limit problems with the groups. Additionally, there is a need for specific police intelligence-gathering activities, including identifying fugitives occasionally connected with some groups. Incidents occasionally occur in spite of police planning efforts.[9]

### Community Fear

A more pervasive problem is the perception citizens have of the dangers posed by gangs in their communities. Reports of the presence of an adult gang, though legitimate cause for citizen anxiety, are difficult for police to deal with until an incident occurs. Incidents in various parts of the country have caused citizen action against gang presence in the community.[10] In two cases, citizen concerns stirred action by city and county boards, precipitating charges that the police were afraid to deal with the gangs.[11]

### Territorial Battles

Battles for "turf" are a continuing law enforcement problem. Often, the rivalry results in violence confined between gang members.[12] Gang war deaths have resulted, however, in battles in public parking lots,[13] attacks upon gang clubhouses,[14] and firebomb and shotgun raids against homes.[15] Frequently, outsiders are injured by gang violence. In New York, 5 people were killed and 22 injured in a vengeance war,[16] and an innocent newsboy in Wisconsin was killed when he moved a bomb that was planted during a gang feud.[17]

### Rivalry for Crime Dominance

Because of a reluctance by group members to cooperate, it is often difficult to sort out the motivations for violence between gangs. Frequently, the feuds begin over another altercation. As time passes, a cycle of retaliation continues until either its momentum weakens or an incident demanding police attention develops. In other cases, however, disagreements are for much larger stakes. Charlotte, N.C., is one such example. Problems with Hell's Angels, Outlaws, and other gangs continue as the gangs struggle to dominate the area's lucrative vice and narcotics trade.[18] Incidents in North Carolina have resulted in an intensified law enforcement effort against gang-related crime problems, including execution-style slayings.[19]

### Crime Conspiracies

In the 1970's, another problem surfaced which served as an indicator of deepening gang involvement in criminal activity. A complex interstate network of associations developed between rebel gangs, and this "brotherhood" provided links for more sophisticated criminal activities. Crime territories were determined, and fixed roles and characteristic ways of doing business evolved. Particularly worrisome to law enforcement officers were the characteristics of organization that made these groups so difficult to penetrate. The following components of organization similar to those seen among traditional organized crime groups were apparent among many outlaw gangs. These characteristics are perpetuated in gang activities today and warrant closer examination.

**"Witness intimidation by gang members . . . is . . . a problem law officers frequently face in gang cases."**

### Codes of Silence

"A Hell's Angel is an honor society, man. We live by some of the strictest rules going and if you break one, you might not have the chance to break another." [20] Attributed to a Hell's Angel member, this quotation describes the rules by which outlaws live. A Hell's Angel member, turned Government witness, provided evidence of a code of silence by describing the killing of two probationary members over the mere suggestion that one was a police informer.[21] A Pagan gang member gave similar testimony. "'I just killed a snitch,' Boyd announced as he returned to the party. 'Is there any more?' As a Pagan prospect, Boyd had demonstrated his loyalty to the club." [22]

Because of a strictly enforced code, there are few discussions with outsiders about gang-related criminal activities. The code appears to be imposed upon nonmembers as well. Witness intimidation by gang members, both directly and indirectly, is an extension of this code and a problem officers frequently face in gang cases. The Margo Compton case is an example of what happened to one person who testified against Hell's Angels. Not only was she slain, following her court disclosure about a club member's involvement in drugs and prostitution, but also killed were her 6-year-old twin daughters and the 19-year-old son of her boyfriend.[23]

Motorcycle gang members' efforts at intimidation have also made police officers the target of gang violence. Police in New York arrested a gang member with a bomb, a revolver, and ammunition who said he wanted to blow up the police station.[24] A detective from Solano County, Calif. was crippled by a bomb blast in 1977 during his investigation of the Hell's Angels.[25] In Maryland, a deputy sheriff was shot and killed when he interrupted a Pagan gang member and an associate in a burglary.[26] In Garden Grove, Calif., a Hessian gang member shot his way out of a bar, killing one policeman and wounding four others.[27] In Portland, Oreg., an officer was killed in a raid on the Outsiders motorcycle gang headquarters.[28] These incidents, only a few of many, testify to officers' personal concern about working gang cases.[29]

### Mobility

The high degree of mobility of outlaw gangs is a hinderance to police agencies attempting to keep track of and sort out the complex criminal connections among gangs and gang members. Outlaw rallies and funerals are attended by gang members from various parts of the country, making it difficult to identify individuals of police interest. These gatherings also provide opportunities for gang members to extend their criminal, as well as their social, networks.[30]

The connections between members of diverse gangs are being used to perpetuate and extend the flow of contraband and to further other criminal activity. The mobility of many individuals connected with motorcycle gangs is well-documented in police files. In fact, some gangs have formed chapters, called nomads, where members do not belong to clubs based in a specific city but are members of a chapter of transients.

**Security Networks**

The extensive security precautions used by gang members also hinder law enforcement efforts. Police have discovered radio scanners in members' possession, and gang members and probates have been observed conducting surveillance of police officers and local prosecutors. Instances of attempted infiltration of Government and law enforcement agencies by gang members and associates have also been reported.[31] There are also reports of occasional gang efforts to obtain information from law enforcement agency employees.

**Criminal Enterprises**

With an increasing level of criminal competence, gangs are committing more sophisticated crimes. The FBI and police departments throughout the United States are becoming more involved in investigations of outlaw gang members. In Indianapolis, Ind., police reported that gangs were "solidifying their ranks to form a national criminal network." [32] Reports of gang infiltration into legitimate businesses in the South and West are being linked with an enormous increase in vice activities.[33] In North Carolina, gangs are being referred to as "the new mafia," a result of the movement of some members into drugs and prostitution connected with businesses such as "photo and art studios and dating services." [34] In various parts of the country, authorities have identified gang-dominated crime networks, including millions of dollars of narcotics, stolen property, firearms, and explosives, as well as the harboring of fugitives.[35] Reports have also surfaced indicating gang members have now graduated to "murder-for-hire" enterprises.[36]

The categories of gang problems law enforcement authorities face are numerous, and the nature and diversity of criminal enterprises associated with gang members are beginning to tax law enforcement resources. It is increasingly important, therefore, that law enforcement officials understand the behavior and characteristics unique to motorcycle gangs. The conclusion of this article will provide the reader with a sociopsychological profile of outlaw motorcyclists. FBI

**"With an increasing level of criminal competence, gangs are committing more sophisticated crimes."**

*(Continued next month)*

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**Footnotes**

[1] Brian Ross, "Hell's Angels," *NBC Nightly News*, New York, September 14, 1978.

[2] John W. Howard, "Report of the Activities of Outlaw Motorcycle Gangs by the Task Force on Welfare Reform, hearings held October 12, 1979, in Washington, D.C." House Republican Research Committee, Washington, D.C., October, 1979.

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# DO YOU HAVE TIME FOR A 16-YEAR-OLD WHO WANTS TO BE LIKE YOU?

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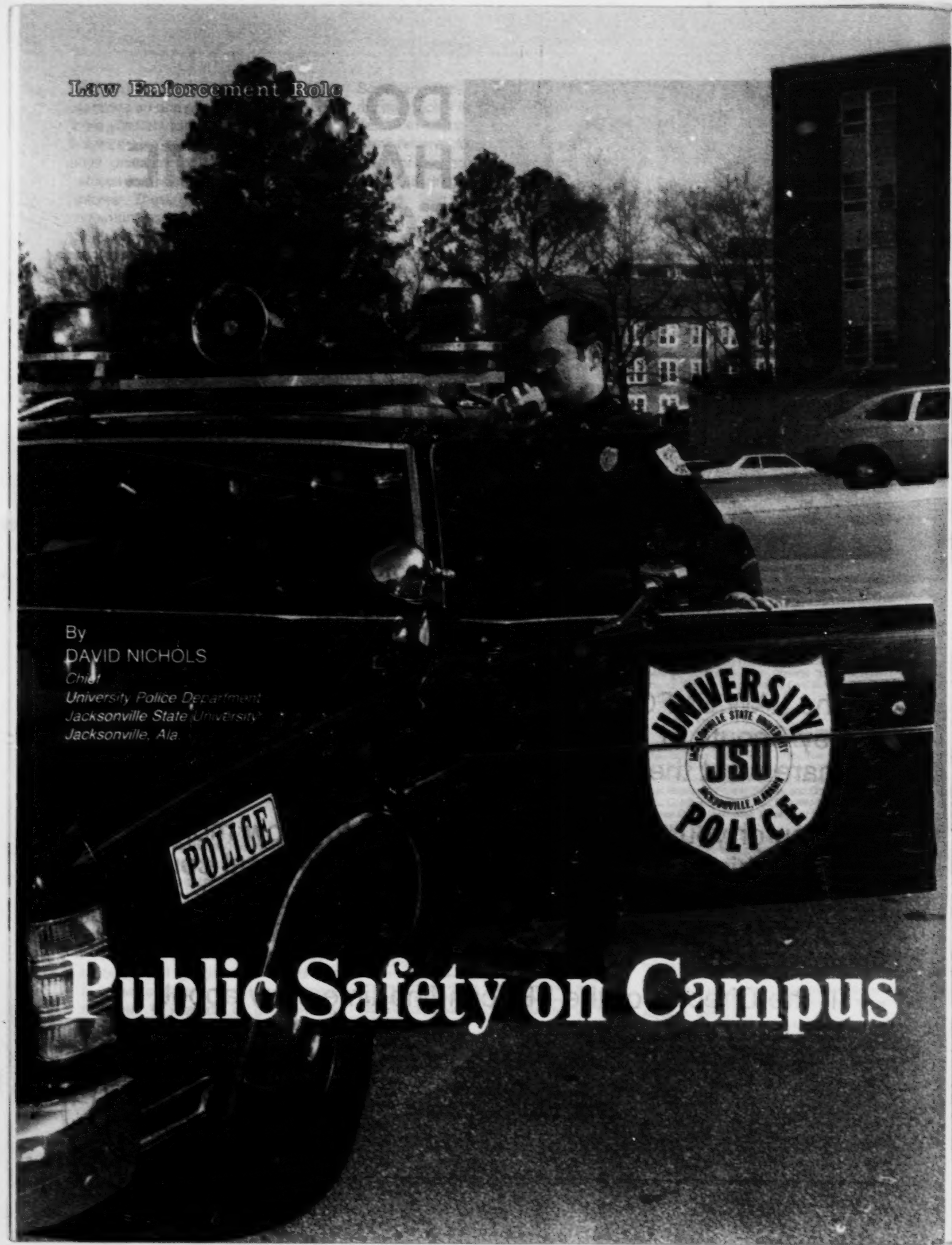
Law Enforcement Role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POLICE

By
DAVID NICHOLS
*Chief*
*University Police Department*
*Jacksonville State University*
*Jacksonville, Ala.*

# Public Safety on Campus

*Chief Nichols*

College and university presidents and top administrators are concerned with every area of the campus community and are committed to quality in both academic and support divisions. The assiduous top administrator is becoming more aware of the importance of effective public safety efforts on campus. While the primary mission of the institution should be that of facilitating academic development, the assurance of a safe environment conducive to the pursuit of educational goals is also essential. Personal safety and property security are major areas for which public safety services must be provided. The increasing liability awareness of the past few years has been a major concern of administrators when making public safety decisions.

During the past 2 decades, significant strides have been made in campus public safety. Innovative programs, as well as a new professionalism, have been achieved through supportive administrative efforts emanating from a cognizance and concern for the total environment of the institution. Public safety on campus includes law enforcement/security, fire safety, emergency medical services, and civil defense procedures. These services are particularly important for the residential campus community. College communities have the same public safety responsibilities as do the municipalities in which they are located and often share services through cooperative arrangements with the local government. However, the chief administrator knows that the ultimate responsibility for safety and security services rests with the institution. Therefore, the best services feasible within budgetary constraints must be afforded.

The selection of an individual to head the public safety department should be the first priority for the administrator. The right kind of leader can assist in setting goals and organizing and implementing programs. In the past, some college administrators gave little attention to public safety, which resulted in the director of the police/security department being chosen on criteria such as longevity within the department, being the oldest officer, and/or having extensive law enforcement experience, i.e., a retired State trooper, former municipal officer, retired military policeman, etc. Frequently, there was no emphasis on advanced education, keen communication skills, or an acceptable philosophy of the role of public safety services within the academic community.

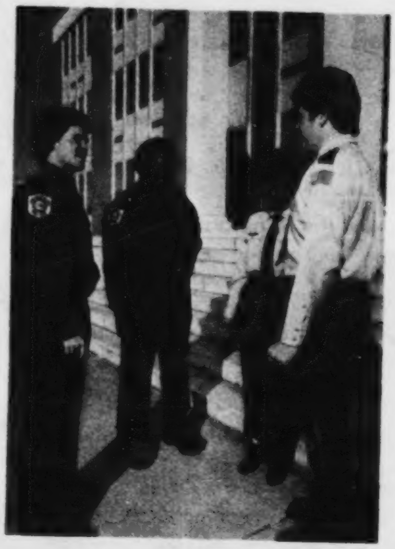
Today, however, the trend is toward hiring individuals who possess a bachelor's degree as a minimum, have proven experience in community relations, have successful experience in law enforcement and other public safety services (preferably in a campus setting), have the ability to communicate effectively with the various publics both on and off campus, and possess human relations skills coupled with administrative abilities. An extensive, painstaking search and selection process is important when seeking competent candidates. A salary range should be attractive and commensurate with the credentials and qualities of a professional individual. Besides being able to relate to his personnel, this individual should be capable of communicating effectively with other administrative officials and students while developing a public safety program appropriate for that particular academic community.

**". . . a viable public safety program for the campus community is an essential support service and a vital component in achieving the mission and goals of the institution."**

Campus law enforcement, which has witnessed more changes than any other public safety service, is one area which should receive special attention from the college president. As recent as the 1950's and early 1960's, the campus "protectors" were usually older (sometimes retired) security guards who had little formal education and often no police training. Their responsibilities entailed building security, custodial tasks, and parking enforcement. Situations requiring responses beyond these usually prompted administrators to summon local law enforcement officers to the campus. This arrangement met the needs of the campus community and fulfilled the expectations of the administration until the tumultuous 1960's when disorder and crime accelerated in the academic community. College presidents then realized the inadequacy of their campus "law" and were dissatisfied with the attitudes and methods of local police when handling sensitive situations. Subsequently, administrators concerned with students' needs, peace, and safety and the autonomy of law enforcement responsibilities on campus property realized it was time to change priorities and direction in order to create a more professional police/security department on campus.

During the 1970's, this new school of thought was reenforced by the increased publicity given to criminal incidents on campuses across the country (i.e., murders, rapes, assaults, and property loss) which resulted in many colleges and universities giving support to improving and strengthening law enforcement departments with better trained and educated personnel. These professional departments are often unnoticed but constitute a viable part of the law enforcement community. Today, innovative procedures, advanced systems, and up-to-date equipment complement the personnel who provide quality law enforcement/security services supportive of the missions and goals of universities across the country.

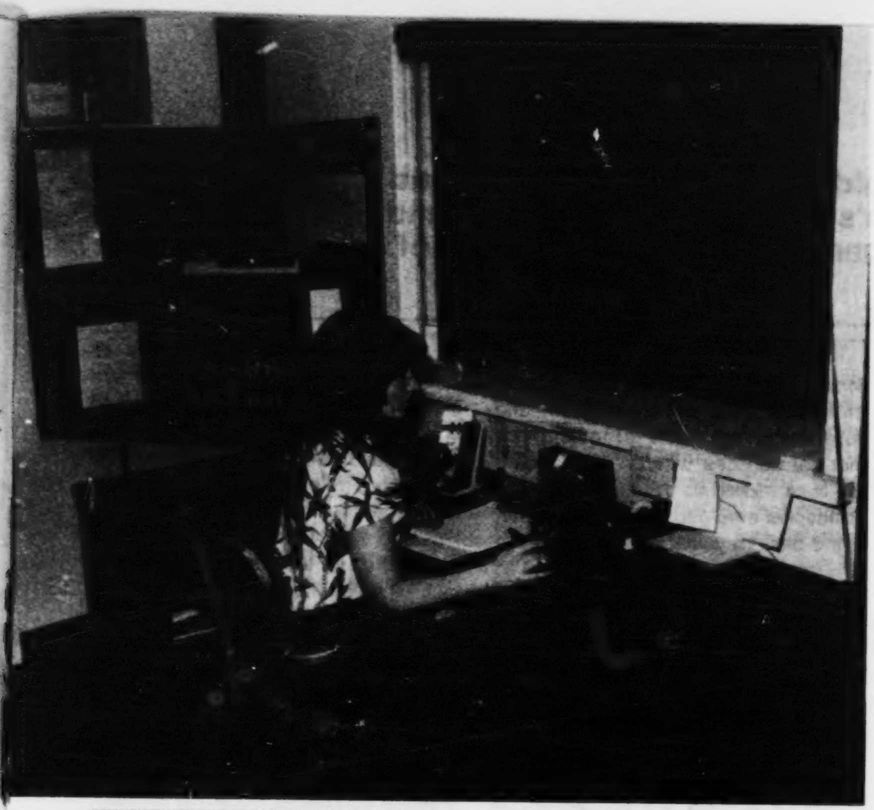
There are a few specific areas in which the progressive administrator must give careful consideration when evaluating and planning for better campus law enforcement/security services. Perhaps one of the most important areas is personnel. Selecting and employing well-educated, intelligent individuals with the potential to be trained professionally and the ability to adapt to the campus environment is the key to establishing an effective campus law enforcement/security department. These professional "protectors" can better communicate with faculty, staff, students, and visitors, while providing quality performance to meet the various needs that may arise in the campus community.



*Sworn officers (dark uniforms) and student patrol officers are assigned campus public safety duties.*

The training of university police has improved significantly in the last few years. Many university police and/or security departments have a large percentage of officers who are either working toward a degree or have attained an advanced degree, and many campus officers now are encouraged to attend State training academies. For example, in Alabama, all public college and university police officers are sworn peace officers and are required to meet the State minimum standards for police officers, which involves attending an 8-week law enforcement academy. In 1980, the Alabama Association of College and University Police Administrators sponsored the first statewide training seminar for campus law enforcement/security officers, which covered such topics as human relations, student relations, role conflicts, traffic and parking, and crowd control. In addition, public as well as private institutions are implementing inservice training programs for their campus officers.

In these days of budgetary constraints, services which can be provided by the campus police should be considered as a "two for the price of one" deal. The 24-hour patrol officer provides both physical and personal security on campus, and at no extra cost, serves as a public relations/information resource. Many departments employ a 24-hour radio communications operator who answers telephones, dispatches various emergency services (i.e. fire department and medical rescue), and provides general information and assistance to faculty, staff, students, and visitors. This 24-hour service also assists other departments on campus (e.g., maintenance, housing, food services, and health services) after regular working hours. A night



*A 24-hour communications system must be provided for a campus public safety program to be effective.*

escort service for female students has been successful and creates a positive public relations image with students while providing comfort and safety. Another common responsibility performed by most police/security departments is building security. This service can be beneficial in several other areas, including energy conservation and safety hazard reporting.

Fire safety is another vital area of public safety which should be a high priority on every campus. Fire prevention and fire protection are the two components of a complete fire safety program. Currently, most universities rely on the local municipality to provide fire protection; however, a growing number of universities are beginning to take a more active role in fire safety for their campus. A fire safety program should include inspections, adequate written standard operating procedures, evacuation procedures, alarm systems, water and hydrant information, and a good communications system. It is the responsibility of the top administrator to ensure that "all of the bases are covered" in the area of fire safety. Administrators must be able to cope with the reality of negligence and liability.

The first step toward assessing "what is" with respect to facilities and

*Fire safety is a vital area of public safety.*

*Building security is just one component of public safety.*

**". . . administrators should assess the philosophy and quality of their institution's public safety functions and support the planning, organizing, and implementing of an effective program."**

equipment is to have regular fire inspections conducted by trained individuals. These inspections include the inspection of fire extinguishers, alarm systems, and general safety standards within campus buildings. All inspections should be documented. Maintaining adequate records and written procedures is a necessity. Buildings should be equipped with local fire alarm systems including pull stations, fire detectors, and sprinkler systems, especially in residence halls. Many universities have installed a central 24-hour monitoring system located at the campus police/security office. With this procedure, all buildings with local systems are connected to the central panel which will indicate when a local system is activated, so that the fire department can be dispatched immediately. In addition to adequate fire detection equipment, evacuation procedures should be defined clearly and disseminated to building occupants. In dormitories, the use of student fire marshals has proved successful in evacuation, building/extinguisher checks, and communication with campus fire safety officials.

Since a fire safety department may be located within the university police/security department or housed under a separate division, it is vital that consistent and cooperative efforts be made by all university constituencies to maintain an effective program.

Another relatively new area of public safety is emergency medical service. In the past, the primary concern and subsequent emphasis of emergency medical services was on transporting the ill or injured to the nearest doctor or hospital emergency room. However, in the past 15 years, emergency medicine/medical rescue has come into its own. This service now provides medical technicians and paramedics with the most advanced equipment. These paramedics have the ability to administer drugs and sustain life until transportation is available.

While the doctrine of "in loco parentis" may not be strictly adhered to, university officials are still obliged to ensure supportive measures for these emergency circumstances. Numerous universities are hiring trained emergency medical technicians to serve as "first responders" in medical emergencies, while relying on local hospitals to provide full-service emergency medical rescue and ambulance service. The university's role, therefore, should be to cooperate with local medical services and maintain effective emergency procedures on the campus, which may include an emergency telephone number with a 24-hour communications operator who can dispatch whatever emergency service is needed.

Another major area of public safety of which the college president should be cognizant and give serious consideration is civil defense. Severe weather conditions, occurring frequently throughout the year, (i.e., tornadoes, snow and ice storms, hurricanes, flooding, etc.) are a threat to everyone on

*University police chief (left) discusses fire/medical rescue procedures with local fireman/medic.*

campus. Planning and special provisions for such weather conditions should be completed prior to the emergency circumstances and should include an alert/notification system, evacuation procedures, a backup power supply, emergency lighting, transportation, food services, and other provisions which may be necessary to maintain minimum life support. Some campuses use police patrol vehicle sirens and speakers to announce impending weather conditions and advice for safety precautions; others have used steam-powered whistles or large outdoor speakers to sound an "alert" warning or to give an "all clear" signal when the warning has passed. It is important to preface any alert/warning system with information regarding these signals.

A well-planned system will also incorporate evacuation drills for students. "Safe" locations should be equipped with a backup power supply, heat, and adequate restroom facilities. Educating the student population will ensure smooth exercise of procedures and negate panic and confusion. To ensure good planning and communications, other major disasters (i.e., bombings, explosions, fires, [illegible].) should also receive special attention. Cooperation with local government agencies and the civil defense is essential and will prove to be a "life saver" during exigent circumstances.

The key to such cooperative efforts is a well-planned, operative communication system. A special two-way radio frequency should exist for all emergency agencies to "plug into," since fire departments, emergency medical rescue, police, civil defense, and hospital emergency rooms may be needed from surrounding communities. An ineffective communications system will be detrimental to the mission at hand.

It is quite evident that a viable public safety program for the campus community is an essential support service and a vital component in achieving the mission and goals of the institution. Innovative procedures combined with professionally trained personnel are relatively new developments which have proven successful in providing effective safety efforts and services. In being responsive to the needs of students and receptive to change, administrators should assess the philosophy and quality of their institution's public safety functions and support the planning, organizing, and implementing of an effective program.

**FBI**

# Killings of Law Enforcement Officers Decline

During the first 6 months of 1982, 36 law enforcement officers were feloniously killed in the United States and its territories, representing a decline from the 49 line-of-duty deaths which occurred in the first half of 1981. Law enforcement agencies have cleared 32 of the 36 killings.

The victims included 24 city policemen, 11 county officers, and an employee of a State law enforcement agency. Four of the victim officers were attempting to thwart robberies or were in pursuit of robbery suspects, three were answering burglary-in-progress calls or were pursuing burglary suspects, and nine were attempting arrests for other crimes. Seven officers were murdered upon responding to disturbance calls, six while enforcing traffic laws, and three were ambushed. Two victims were investigating suspicious persons or circumstances, one was handling a civil disorder, and another was slain while transporting a prisoner.

As in the previous year, firearms were the dominant weapons used—34 of the 36 officer killings were committed with firearms. Handguns were used in 24 of the murders, rifles in 8, and shotguns in 2. Of the remaining victim officers, one was intentionally struck by a vehicle; the other was stabbed to death.

The number of officers killed in the Southern States totaled 13, followed by 12 in the North Central States, 7 in the Western States, 2 in the Northeastern States, 1 in the Mariana Islands, and 1 in Puerto Rico.

# THE CONSTITUTIONAL RIGHT TO PRIVACY AND REGULATIONS AFFECTING THE SEXUAL ACTIVITY OF LAW ENFORCEMENT EMPLOYEES

By
DANIEL L. SCHOFIELD
*Special Agent*
*FBI Academy*
*Legal Counsel Division*
*Federal Bureau of Investigation*
*Quantico, Va.*

*Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.*

Many law enforcement agencies have an internal policy which regulates in varying degrees the personal conduct of employees. This policy frequently includes standards of conduct relating to an employee's off-duty sexual activity. In recent years, law enforcement agencies and managers have been confronted with litigation initiated by employees who claim that the implementation and enforcement of those policies impermissibly infringes on their constitutional right to privacy.

This article examines the constitutionally based right to privacy and alerts law enforcement personnel to the significant privacy issues that are involved in the development of a standards of conduct policy. The article will begin with a discussion of some U.S. Supreme Court decisions involving the constitutional right to privacy. Next, it will examine some decisions of State and Federal courts where law enforcement employees have alleged privacy deprivations. In the final section, specific recommendations will be offered concerning factors that a law enforcement manager should consider in formulating a standards of conduct policy.

It is important to note at the outset what this article will not address. First, this article does not consider the full range of issues that are included within the constitutional right to privacy. Instead, the focus will be on the relationship between the right to privacy and private consensual sexual activity. Second, the article will not address privacy rights an employee might derive from State constitutions, State or Federal legislation, or union agreements. Third, the article will not examine other constitutionally based rights such as freedom of speech, freedom of association, equal protection, or due process.[1]

One final point deserves mention. This article does not purport to set forth any views on the morality of particular sexual activity. People have different views on this sensitive and emotional subject which are shaped and colored by one's philosophy, experiences, religious training, attitudes toward life and family, and moral values. In short, the article is a legal analysis, not a moral judgment, and accordingly, any recommendations or conclusions should be considered only in that vein.

## CONSTITUTIONAL PRIVACY AND THE U.S. SUPREME COURT

### Overview

While the Supreme Court has decided a number of cases involving the constitutional right to privacy, it is important to emphasize two points which tend to complicate the job of assessing the scope of protection afforded by those decisions to a law enforcement employee's sexual activities. First, the U.S. Constitution does not contain any

*Special Agent Schofield*

clear textual support for a constitutional right to privacy. Second, the Supreme Court has not decided a case which clearly addresses the extent to which sexual activity is protected by the right to privacy.

Nevertheless, an examination of several Supreme Court opinions involving right to privacy claims should provide a useful foundation from which we can begin to make some principled judgments concerning the proper resolution of privacy claims in the context of employee sexual activity. However, one ultimately is faced with the difficult task of reasoning by analogy from these decisions which leave unanswered some important questions and reflect some disagreement among individual Justices.

**Privacy Development**

In 1965 in the case of *Griswold* v. *Connecticut*,[2] the Supreme Court declared unconstitutional a Connecticut statute which made the use of contraceptives a criminal offense. Griswold and a physician had been convicted because they gave information, instruction, and medical advice to married persons regarding means of preventing conception. While the six Justices who comprised the majority expressed some disagreement over the basis for the holding, they all concluded that the State birth-control law unconstitutionally intruded upon the right of privacy emanating from the U.S. Constitution.[3] In a concurring opinion, Justice Goldberg noted that the holding in *Griswold* should not affect the constitutionality of State statutes which prohibit adultery and fornication, and it in no way interferes with a State's proper regulation of sexual promiscuity or misconduct.[4]

The scope of privacy protection recognized in *Griswold* was expanded in 1972 in the case of *Eisenstadt* v. *Baird*.[5] In that case, a majority of six Justices invalidated a Massachusetts statute which prohibited the distribution of contraceptives except to married persons.[6] Writing for the majority, Justice Brennan said:

> "If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." [7]

In addition, the Court quoted with approval the following language from an earlier Supreme Court decision which appears to offer increased possibilities for privacy protection:

> "(A)lso fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy.
>
> "The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfaction of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized man." [8]

**". . . the right to privacy, where applicable, deserves special protection from governmental interference."**

One point that emerges clearly from the majority opinions in *Griswold* and *Eisenstadt* is that the right to privacy, where applicable, deserves special protection from governmental interference.

In 1973, the Supreme Court decided another important case involving the right to privacy. In *Roe* v. *Wade*,[9] a majority of seven Justices declared unconstitutional a Texas abortion law that made it illegal to procure an abortion except by medical advice for the purpose of saving the life of the mother. Writing for the majority, Justice Blackmun noted that while the Constitution does not explicitly mention a right of privacy, the Court in prior decisions had recognized that such a right is contained in the concept of personal liberty and that it protects fundamental personal rights from governmental intrusion.[10] The majority then concluded that this right is broad enough to encompass a woman's decision whether to terminate her pregnancy.[11]

However, this right to privacy is not absolute or unqualified and may be restricted where the government can demonstrate compelling reasons for such restriction.[12] In that respect, the Court determined that the State's interest in proscribing abortion is compelling when the stage of pregnancy is reached where the fetus is deemed viable.[13]

It is difficult to discern from the opinions in *Griswold*, *Eisenstadt*, and *Roe* whether they establish a constitutional right of privacy or personal autonomy in private consensual sexual activity.[14] However, several cases decided since those decisions suggest that the Supreme Court has not extended the constitutional right in personal autonomy to encompass claims beyond those activities relating to marriage, procreation, contraception, abortion, family relationships, and the rearing and education of children.[15]

## Scope of Privacy Protection

In *Kelley* v. *Johnson*,[16] the Court refused to expand the right to privacy to invalidate a regulation of a law enforcement agency concerning the length and style of a policeman's hair. The court distinguished the claim in *Kelley* from those in prior cases like *Griswold* and *Roe* by noting that the latter cases involved a substantial infringement of an individual's freedom of choice with respect to certain basic matters of procreation, marriage, and family life.[17]

In another case, *Paris Adult Theater* v. *Slaton*,[18] the Court rejected a right to privacy claim involving the viewing of allegedly obscene films in a public theater. The Court drew a sharp distinction between public and private conduct and limited the holding of an earlier case, *Stanley* v. *Georgia*,[19] to the viewing of such films in the privacy of the home.[20] The Court said the constitutionally protected privacy of family, marriage, motherhood, procreation, and child rearing is not just concerned with a particular place, but with a protected intimate relationship which can extend to the doctor's office, the hospital, the hotel room, or as otherwise required to safeguard the right to intimacy involved.[21] In contrast, the Court said there is clearly no necessary or legitimate expectation of privacy which would extend to marital intercourse on a street corner.[22]

With respect to private consensual sexual behavior, there is disagreement among individual Justices and legal scholars concerning the extent to which the right of privacy affords constitutional protection.[23] For example, in *Doe* v. *Commonwealth's Attorney*,[24] the Supreme Court summarily affirmed a Federal district court's dismissal of a challenge by a male homosexual to Virginia's sodomy law.[25] However, the precedential value of the Court's action in *Doe* is debatable because the Court did not hear oral argument and did not write an opinion setting forth its reasoning.[26]

Predictably, disagreement over the significance of the Court's action in *Doe* surfaced the next term of the Supreme Court in the case of *Carey* v. *Population Services International*.[27] Writing for the majority, Justice Brennan observed that the Court had not definitively answered the difficult question whether and to what extent the Constitution prohibits State statutes regulating private consensual sexual activity among adults.[28] In response, Justice Rehnquist wrote in dissent that the decision in *Doe* had definitively established the constitutional validity of State statutes prohibiting certain consensual sexual conduct.[29]

In the case of *Michael M.* v. *Superior Court of Sonoma County*,[30] Justice Rehnquist and Justice Brennan again expressed their disagreement as to the affect of precedent on governmental authority to prohibit consensual sexual behavior. In his plurality opinion, Justice Rehnquist seemed to assume that a State could validly make sexual intercourse among teenagers a criminal act.[31] In a dissenting opinion, Justice Brennan countered by observing that prior cases would not foreclose a privacy challenge to the State's power to criminalize consensual sexual activity.[32] Justice Brennan argued that minors enjoy a right of privacy in connection with decisions affecting procreation and that it is not settled that a State may rely on a pregnancy-prevention justification to make consensual sexual intercourse among minors a criminal act.[33]

The foregoing cases suggest that the exact contours of the constitutional right to privacy have not been clearly established.[34] The differing views expressed by Justices of the Supreme Court concerning the relationship between privacy and sexual activity increase the likelihood of future litigation on that issue.

The next section of this article will examine some cases decided in the lower Federal and State courts where employees have challenged the constitutionality of regulations affecting their sexual behavior. The first three cases will involve instances where privacy claims were rejected, and the remaining cases will represent decisions where privacy claims were sustained.

## LOWER COURT DECISIONS

### Privacy Claims Rejected

In *Fabio* v. *Civil Service Commission of the City of Philadelphia*,[35] the Supreme Court of Pennsylvania ruled that a Philadelphia police officer's constitutional right to privacy was not violated by his dismissal for sexual misconduct. The officer was discharged for "conduct unbecoming an officer" after it was demonstrated that he induced his wife to consent to an extramarital affair with a fellow police officer and then participated in an extramarital affair with his wife's 18-year-old sister. In rejecting the officer's claim of a privacy infringement, the court said that even if the officer's conduct was protected by the Constitution, the right to privacy is not an unqualified right, and at some point, the government's interest may become sufficiently compelling to sustain a regulation of that activity.[36] While noting that in Pennsylvania individuals have the right to engage in extramarital sexual activities free from the threat of criminal prosecution, the court held that the State has a wider latitude and different interests in regulating the activities of its employees than in the behavior patterns of the citizenry at large.[37]

Accordingly, the court concluded that even under the strictest standards of review, the government's interests were sufficiently compelling to overcome the officer's privacy claim.[38] In ruling that police officers can be held to a higher standard of conduct than other citizens, including other public employees, and that the officer's conduct had adversely affected his department, the court said:

> "The government must tread lightly when it investigates and regulates the private activities of its police officers. Public employers must be careful not to transform anachronistic notions of unacceptable social conduct into law. However, when an employee's private life is the center of rumors, when it adversely affects his fellow workers, when it corrupts his family members, and when it results in complaints to his employer, governmental intervention is warranted."[39]

In *Childers* v. *Dallas Police Department*,[40] a Federal district court ruled that Childers, an admitted homosexual, was not deprived of his right to privacy when the Dallas Police Department refused to hire him for a position in the property division of the department.[41] The court acknowledged that while the interests of the government frequently conflict with the constitutional interests of its employees, the government in certain instances has a right as an employer to control the conduct of its employees.[42]

Moreover, the court interpreted the Supreme Court's decision in *Doe* v. *Commonwealth's Attorney*[43] as implying that homosexual conduct does not enjoy special constitutional protection and concluded that the *Doe* decision was binding precedent.[44] The court added that even if homosexual conduct was in some respects protected by the Constitution, the Dallas Police Department would only be required to show that its decision was rationally related to legitimate governmental purposes.[45] Recognizing the special needs of law enforcement employment, the court said:

> "There are a myriad of grounds upon which the police department's actions and the regulations upon

**". . . while the interests of the government frequently conflict with the constitutional interests of its employees, the government in certain instances has a right as an employer to control the conduct of its employees."**

> which those actions were based may be found appropriate for the full and efficient accomplishment of the police department's mission. The regulations serve to protect the integrity of the police department and to maintain discipline. There is legitimate concern about tension between known and active homosexuals and others who detest homosexuals. There are also legitimate doubts about a homosexual's ability to gain the trust and respect of the personnel with whom he works. Moreover, the police department could rationally conclude that tolerance of homosexual conduct might be construed as tacit approval, rendering the police department subject to approbation and causing interference with the effective performance of its function."[46]

While it does not involve a law enforcement employee, the decision in *Hollenbaugh* v. *Carnegie Free Library*[47] deserves brief mention. In that case, the Supreme Court refused to review a decision of a lower Federal court sustaining the discharge of two public library employees for living in an openly adulterous relationship.[48] In rejecting the privacy claim, the district court limited the protection afforded by the right to privacy to only those fundamental rights and personal intimacies associated with the home, the family, motherhood, procreation, and child rearing.[49] The court said there is no fundamental privacy right for two persons, one of whom is married, to live together in an openly adulterous relationship.[50]

**Privacy Claims Sustained**

In *Shuman* v. *City of Philadelphia*,[51] a Federal district court ruled in favor of an officer who had been dismissed pursuant to a policy of the Philadelphia Police Department. The officer, who was separated from his wife, had become romantically involved with an 18-year-old woman. Following a series of complaints from the woman's mother and an Internal Affairs Bureau surveillance, the officer was subjected to an official interview concerning his personal relationship with the woman. The officer refused to answer questions concerning his off-duty personal life despite being warned that a city ordinance provided that he could be dismissed for his refusal to cooperate. Subsequently, the officer was dismissed for his refusal to answer questions during an official departmental investigation.

The court noted that where there is a zone of privacy protecting activities of an employee, compelled disclosure in and of itself may be unconstitutional absent a strong countervailing State interest.[52] In this regard, the court said that the Supreme Court's decision in *Whalen* v. *Roe*[53] had recognized the existence of a legitimate strand of privacy involving an individual's interest in avoiding disclosure of personal matters.[54]

Moreover, the court found that private sexual conduct is within the "zone of privacy" and is protected from unwarranted governmental intrusion. The court said some matters fall within this zone not because they necessarily relate to the exercise of substantive rights, but because they are private and constitute areas of one's life where the government simply has no legitimate interest.[55]

The court noted, however, that an employee's privacy rights are not absolute and that if the sexual activities of a public employee were open and notorious, or if such activities took place in a small town, the public employer might very well have an interest in investigating such activities and possibly terminating the employee.[56] With respect to the facts in *Shuman*, the court ruled that the department had failed to meet its burden of demonstrating how the officer's private sexual activities impacted on his job as a police officer and said the officer could not be dismissed for his refusal to answer questions concerning his personal life.[57]

In *Smith* v. *Price*,[58] a panel of the U.S. Court of Appeals for the Fifth Circuit assumed without deciding that a police officer's adulterous relationship was included within the right to privacy.[59] The privacy issue was not directly decided because the court concluded that the officer's sexual conduct was not a motivating factor in his dismissal. The court determined that the department had other legitimate reasons for the termination, including the officer's visits to the woman's home while on duty without notifying the dispatcher and his failure to report the taking of his police gun and gunbelt.[60]

In *Major* v. *Hampton*,[61] a Federal district court ruled that an Internal Revenue Service agent was improperly dismissed even though his discharge was based on a finding that he had engaged in off-duty extramarital sexual activities.[62] While conceding that some types of off-duty sexual conduct might seriously jeopardize the ability of a particular employee, the court said the government does not have an unlimited license to inquire into the private lives of its employees.[63]

The court noted that the peculiar relationship of employer-employee permits the government, when it acts as employer, to require more of its employees than it may require of the general public.[64] However, the court said those governmental prerogatives are more limited in instances where an employee's fundamental rights are affected.[65] In those instances, a compelling as compared to a rational justification must be demonstrated to justify an infringement.[66]

The court then acknowledged the fact that the degree of protection afforded sexual activity by the right to privacy is not clearly defined, but concluded that the dismissal of the agent was not justified even under the less rigorous "rational basis" standard.[67] In that regard, the court observed that the agent's adulterous conduct occurred in the City of New Orleans, was circumspect, and had not brought any significant discredit to his employer. Focusing on the factors to be assessed, the court said:

> "To some degree the determination whether an employee's off-duty acts tend to discredit either the employee or his employer must depend upon the nature of the acts, the circumspection or notoriety with which they are performed, and the atmosphere of the community in which they take place." [68]

One final case merits some attention. While it does not involve the privacy claim of an employee, the recent decision in *People* v. *Onofre*[69] illustrates a significant expansion of the right to privacy doctrine. In that case, the Court of Appeals of New York held that the State consensual sodomy statute was violative of the constitutional right to privacy. In describing the constitutional right to privacy, the court said it is a right of independence in making certain kinds of important decisions, with a concomitant right to conduct oneself in accordance with those decisions, undeterred by governmental restraint.[70] Noting that the Supreme Court's decision in *Eisenstadt* distinguished between public and private morality, the court concluded that the State had failed to demonstrate how government interference with the practice of personal choice in matters of intimate sexual behavior out of view of the public and with no commercial component will serve to advance the course of public morality or do anything other than restrict individual conduct and impose a concept of private morality chosen by the State.[71] In summary, the court said:

> ". . . (T)here has been no showing of any threat, either to participants or the public in general, in consequence of the voluntary engagement by adults in private, discreet, sodomous conduct. Absent is the factor of commercialization with the attendant evils commonly attached to the retailing of sexual pleasures; absent the elements of force or of involvement of minors which might constitute compulsion of unwilling participants or of those too young to make an informed choice, and absent too intrusion on the sensibilities of members of the public, many of whom would be offended by being exposed to the intimacies of others. Personal feelings of distaste for the conduct sought to be proscribed . . . and even disapproval by a majority of the populace, if that disapproval were to be assumed, may not substitute for the required demonstration of a valid basis for intrusion by the State in an area of important personal decision protected under the right of privacy drawn from the United States Constitution-areas, the number and definition of which have steadily grown but, as the Supreme Court has observed, the outer limits of which it has not yet marked." [72]

## DEVELOPING POLICY

It is important for law enforcement agencies to develop policy that is both understandable and fair to employees and effective in meeting agency needs. When that policy attempts to regulate an employee's off-duty sexual conduct, law enforcement managers should be particularly sensitive to the potential right of privacy claims highlighted by the cases discussed in this article.

**". . . it is . . . important for law enforcement agencies to provide employees with notice of the factors that will be evaluated in deciding whether sexual conduct will result in disciplinary action."**

Those cases reveal differing modes of analyses regarding whether private sexual activity is protected by the right to privacy and to what extent. While it is difficult to offer definitive predictions about how courts will resolve employee privacy claims in future litigation, there are nevertheless some principles emanating from the cases upon which there is general agreement. Set forth below are those areas of consensus which should be considered when a standards of conduct policy is being formulated.

1) While a law enforcement employee cannot be required to surrender his constitutional rights as a condition of employment, law enforcement employers can restrict to some extent the constitutional freedoms of their employees because of the peculiar needs associated with the employer-employee relationship. The degree of restriction permissible depends on the nature of the right affected. For example, if a fundamental right such as freedom of speech is infringed, the government would be required to show a compelling justification. Conversely, if the right is not fundamental, such as hair length, then only a rational reason is required to justify a departmental regulation. The distinction between compelling need and rational basis is significant in terms of the burden on the employer to provide justification for disciplinary action.

2) Use of catch-all provisions like "conduct prejudicial to good order" or "conduct unbecoming an officer" have been viewed as constitutionally fair and adequate notice as long as the specific basis for discipline is consistent with substantive constitutional standards.[73] Recognizing that it is not feasible to delineate all the types of conduct and circumstances that would constitute "conduct unbecoming an officer," it is nonetheless important for law enforcement agencies to provide employees with notice of the factors that will be evaluated in deciding whether sexual conduct will result in disciplinary action.

3) The courts are divided over the question of whether an employee's private consensual sexual conduct is entitled to protection as a fundamental constitutional right. Assuming *arguendo* that it is and that compelling reasons would be required before disciplinary action would be constitutionally appropriate, the following are legitimate questions for a law enforcement employer to consider:

A. Has the employee engaged in conduct which is subject to criminal punishment within the jurisdiction of the employing agency?
B. Was the employee's conduct private and discreet or open and notorious?
C. Has public confidence and respect for the law enforcement agency been substantially diminished?
D. Has the conduct damaged agency efficiency or morale?
E. Has the conduct impaired the ability of the employee to objectively and diligently complete work assignments or to handle classified information?

## CONCLUSION

The right to privacy issues discussed in this article are complex and require some careful balancing of competing interests. It is reasonable to anticipate additional litigation as courts attempt to further develop and define the scope of protection afforded by the constitutional right to privacy. In view of the fact many governmental entities face the prospect of strict liability for policy that violates an employee's constitutional rights,[74] it is imperative that law enforcement agencies develop policy on a principled basis consistent with constitutional requirements. Furthermore, the assistance of competent legal advice in the development and implementation of such policy will reduce the probability of subsequent liability and also increase the confidence of law enforcement personnel in the legitimacy of a standards of conduct policy. **FBI**

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**Footnotes**

[1] For a discussion of the constitutional rights of law enforcement employees, *see* Daniel L. Schofield, "Public Employment and the U.S. Constitution—Recent Supreme Court Opinions," *FBI Law Enforcement Bulletin*, July & August 1976.

[2] 381 U.S. 479 (1965).

[3] *Id.* at 485–86. Justices Black and Stewart dissented, arguing that there is no constitutional right to privacy. *Id.* at 507.

[4] *Id.* at 498–99. Chief Justice Warren and Justice Brennan joined this opinion.

[5] 405 U.S. 438 (1972).

[6] *Id.* at 443. The Court found that the statute violated the rights of single persons under the Equal Protection Clause of the 14th amendment.

[7] *Id.* at 453.

[8] *Id.* at n. 10.

[9] 410 U.S. 113 (1973).

[10] *Id.* at 152–53.

[11] *Id.* at 153.

[12] *Id.* at 155.

[13] *Id.* at 164.

[14] A number of legal commentators have viewed *Griswold* as marking the advent of an era of constitutionally protected sexual freedom. *See* Grey, "Eros, Civilization and the Burger Court," 43 Law & Contemp. Prob. 83, 84 (1980).

[15] *See* "Developments in the Law—The Constitution and the Family," 93 Harv. L. Rev. 1156 (1980).

[16] 425 U.S. 238 (1976).

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[17] *Id.* at 244. The Supreme Court has also refused to expand the scope of protection afforded by the right to privacy in the following three cases: *Whalen* v. *Roe*, 429 U.S. 589 (1977) (governmental storage of personal data in computers); *Paul* v. *Davis*, 424 U.S. 693 (1976) (injury to reputation); *Paris Adult Theater* v. *Slaton*, 413 U.S. 49 (1973) (viewing obscene films in a public theater).

[18] 413 U.S. 49 (1973).

[19] 394 U.S. 557 (1969).

[20] 413 U.S. 66, n. 13.

[21] *Id.*

[22] *Id.*

[23] For a comprehensive review of the differing views of legal commentators, *see* Katz, "Sexual Morality and the Constitution: *People* v. *Onofre*," 46 Albany L. Rev. 311 (1982) and Karst, "The Freedom of Intimate Association," 89 Yale L. J. 624 (1980).

[24] 425 U.S. 901 (1976).

[25] *Doe* v. *Commonwealth's Attorney*, 403 F. Supp. 1199 (E.D. Va. 1975). The Federal district court held in a 2 to 1 vote that the sodomy statute was constitutional, over contentions that it deprived adult males engaging in regular homosexual relations consensually and in private of their constitutional rights to privacy.

[26] One legal commentator has suggested that the absence of any real threat of prosecution of the *Doe* plaintiffs suggests that the Court's affirmance might have rested on a ripeness ground. *See* L. Tribe, American Constitutional Law 989 (1978). Justices Brennan, Marshall, and Stevens dissented from the summary disposition and urged that the case be set for oral argument.

[27] 431 U.S. 678 (1977). The Court declared unconstitutional a New York statute which regulated the distribution of nonmedical contraceptives.

[28] *Id.* at 694, n. 17. Justice Brennan was able in *Carey* to restate the holding of *Griswold* (in light of *Eisenstadt* and *Roe*) as follows: "*Griswold* may no longer be read as holding only that a state may not prohibit a married couple's use of contraceptives. Read in light of its progeny, the teaching of *Griswold* is that the Constitution protects individual decisions in matters of childbearing from unjustified intrusion by the state." After noting that "intrusion into 'the sacred precincts of marital bedrooms' made (the law in *Griswold*) particularly 'repulsive,' " he added that "subsequent decisions have made clear that the constitutional protection of individual autonomy in matters of childbearing is not dependent on that element." *Id.* at 687.

[29] *Id.* at 718, n. 2.

[30] 450 U.S. 464 (1981).

[31] *Id.* at 472, n. 8.

[32] *Id.* at 491, no. 5.

[33] *Id.*

[34] One author has summarized these cases as follows: "Thus, the right to privacy has sprouted at least two branches: a broad protection of the home from governmental intrusion and a safeguarding of certain intimate relationships when confined to appropriate locations closely associated with the very nature of the relationship." *See* "Application of the Constitutional Privacy Right to Exclusions and Dismissals from Public Employment," 1973 Duke L. J. 1037, 1044–45 (1973).

[35] 414 A.2d 82 (1980).

[36] *Id.* at 89. There are a variety of instances where an officer's sexual activities may involve conduct which is clearly beyond the protection of the constitutional right to privacy. For example, an officer may engage in sexual activity while on duty in a public place or may use force or intimidation. For a comprehensive discussion of sexual misconduct cases not involving right to privacy claims, *see* "Sexual Misconduct or Irregularity as Amounting to Conduct Unbecoming an Officer, Justifying Officer's Demotion or Removal or Suspension from Duty," 9 ALR 4th 614 (1981).

[37] The court noted that Pennsylvania had eliminated the crime of adultery in 1972 and the civil cause of action of criminal conversation in 1976. 414 A.2d at 89.

[38] *Id.* at 90.

[39] *Id.*

[40] 513 F.Supp. 134 (N.D. Tex. 1981).

[41] The job in the property room entailed handling and recording all property and drugs coming into the custody of the police department, as well as occasionally going to the scene of a crime. *Id.* at 137.

[42] *Id.* at 139–40.

[43] 425 U.S. 901 (1976).

[44] 513 F.Supp. at 146.

[45] *Id.*

[46] *Id.* at 147–48.

[47] 436 F.Supp. 1328 (W.D. Pa. 1977), *aff'd mem.*, 578 F.2d 1374 (3d Cir. 1978), *cert. denied*, 439 U.S. 1052 (1978).

[48] Both Justices Brennan and Marshall objected to the denial of certiorari. Justice Marshall characterized the lower court's decision as an unwarranted intrusion into the privacy of public employees absent a showing of a substantial governmental interest. *Id.* at 1056. (Marshall dissenting).

[49] 436 F.Supp. at 1333.

[50] *Id.* at 1334. In the case of *Wilson* v. *Swing*, 436 F.Supp. 555 (M.D. N.C. 1978), a Federal district court concluded that adultery is not protected by the constitutional guarantee of privacy or association. The court said that a police officer who had engaged in an extramarital affair involving another police officer was validly disciplined because the action was rationally related to the department's interest in morale, discipline, effectiveness, and reputation in the community.

[51] 470 F.Supp. 449 (E.D. Pa. 1979).

[52] *Id.* at 458.

[53] 429 U.S. 589 (1977).

[54] 470 F.Supp. at 458.

[55] *Id.* at 458–59.

[56] *Id.* at 459.

[57] *Id.* at 461. The court noted that adultery had not been a crime in Pennsylvania since 1972. Moreover, the court concluded that the officer's activities were done privately, unobtrusively, and without publicity.

[58] 616 F.2d 1371 (5th Cir. 1980).

[59] *Id.* at 1375. In a concurring opinion, Judge Hill objected to the panel's assumption that the U.S. Constitution guarantees the right to commit adultery. *Id.* at 1380.

[60] 616 F.2d at 1375–76.

[61] 413 F.Supp. 66 (E.D. La. 1976).

[62] The facts revealed that the agent had rented an apartment in New Orleans, together with three other males, for the purpose of sexual relationships with consenting females during off-duty hours. *Id.* at 67.

[63] *Id.*

[64] *Id.* at 70.

[65] *Id.* at 69.

[66] *Id.*

[67] *Id.* at 70, n. 2.

[68] *Id.* at 70.

[69] 415 N.E.2d 936 (N.Y. Ct. App. 1980), *cert. denied*, 451 U.S. 987 (1981).

[70] *Id.* at 939.

[71] *Id.* at 941.

[72] *Id.* at 941–42. The *Onofre* decision has been characterized as a remarkable extension of the Federal right to privacy because the court read a right to choose one's means of sexual gratification into the Supreme Court's decisions on birth control, abortion, and obscenity. Moreover, the decision is noteworthy because it constitutes the first judicial victory for advocates of sexual freedom for homosexuals in a case in which homosexual acts were directly at issue. See *Katz*, "Sexual Morality and the Constitution: *People* v. *Onofre*," 46 Albany L. Rev. 311, 312–13 (1982).

[73] *Davis* v. *Williams*, 617 F.2d 1100 (5th Cir. 1980), *cert. denied*, 449 U.S. 937 (1980). The court noted that these phrases require a person to conform his conduct to an imprecise but comprehensible normative standard. *Id.* at 1103.

[74] *See* Daniel L. Schofield, "Law Enforcement and Governmental Liability—An Analysis of Recent Section 1983 Litigation," *FBI Law Enforcement Bulletin*, January 1981.

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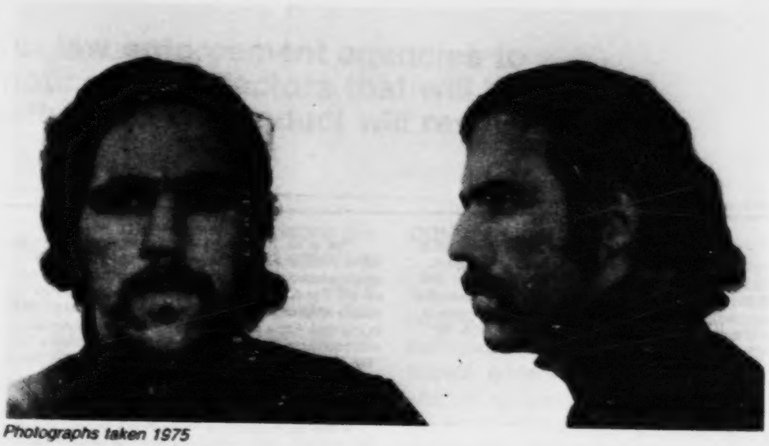

*Photographs taken 1975*

**Raymond Luc Levasseur**

Raymond Luc Levasseur, also known as John Joseph Boulette, Jack Mills, John R. Mills, Edward John Pichette, Joseph Michael Mocchi, Robert Raymond, Walter Rogers, "Animal," "Jimmy," and "Melville"

**Wanted for:**

Bank Robbery; Interstate Flight—Unlawful Possession of a Weapon

**The Crime**

Levasseur has been added to the FBI's list of Ten Most Wanted Fugitives. He is being sought for his alleged involvement in armed bank robberies and for weapons violations.

Federal warrants were issued on September 30, 1976, and on February 23, 1977, in Portland, Maine, charging Levasseur with bank robbery. A Federal warrant was also issued on July 12, 1976, in Providence, R.I., charging him with unlawful interstate flight to avoid prosecution for the crime of unlawful possession of a weapon.

**Description**

| | |
|---|---|
| Age | 35, born October 10, 1946, Sanford, Maine |
| Height | 6′. |
| Weight | 185 pounds. |
| Build | Medium. |
| Hair | Brown. |
| Eyes | Green. |
| Complexion | Dark. |
| Race | White. |
| Nationality | American. |
| Occupations | Forklift operator, laborer, lumber mill worker. |
| Remarks | Has been convicted for selling marihuana. |
| Scars & Marks | Scars on right elbow, around outside of right eye, and on right ankle; bottom of left ear lobe missing; tattoos: dragon on upper right arm, panther's head with "Liberation" on left arm. |
| Social Security Nos. Used | 006-44-3289.<br>004-70-7449. |
| FBI No. | 791 943 G. |

**Caution**

Levasseur, a reported member of a revolutionary group that has claimed credit for several acts of violence and which allegedly finances its operations through criminal activities, has been known to possess numerous weapons in the past. He may be accompanied by Thomas William Manning, FBI Identification Order 4734, one of the FBI's Ten Most Wanted Fugitives. Consider both armed and extremely dangerous.

**Notify the FBI**

Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone number of which appears on the first page of most local directories.

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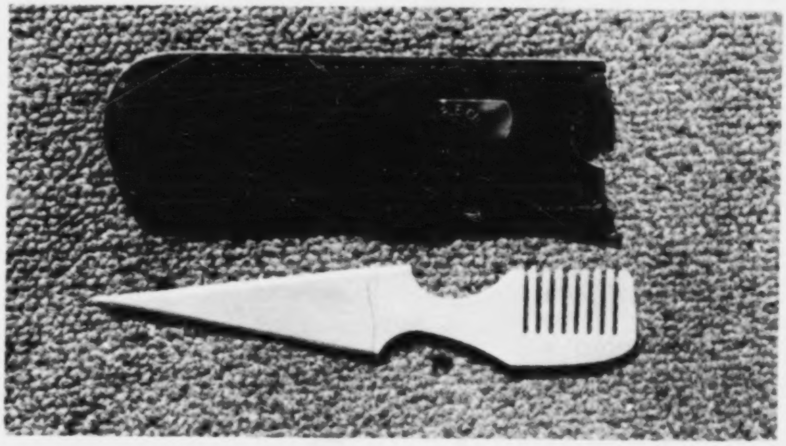
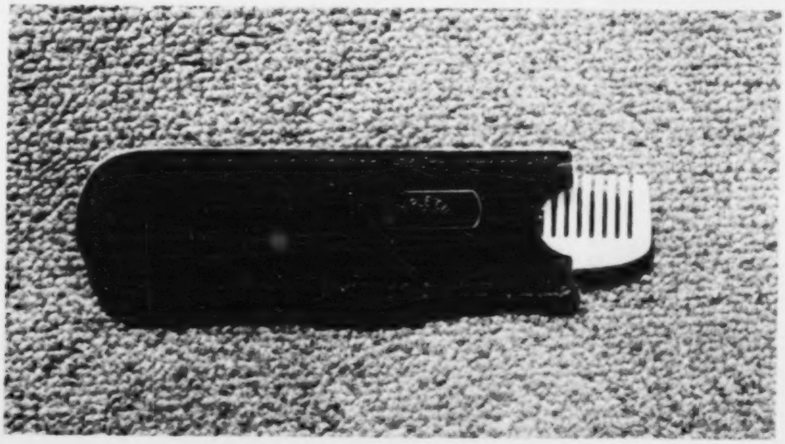
*(Originally submitted by the Rochester, Minn., Police Department. Photographs submitted by the Tennessee Valley Authority.)*





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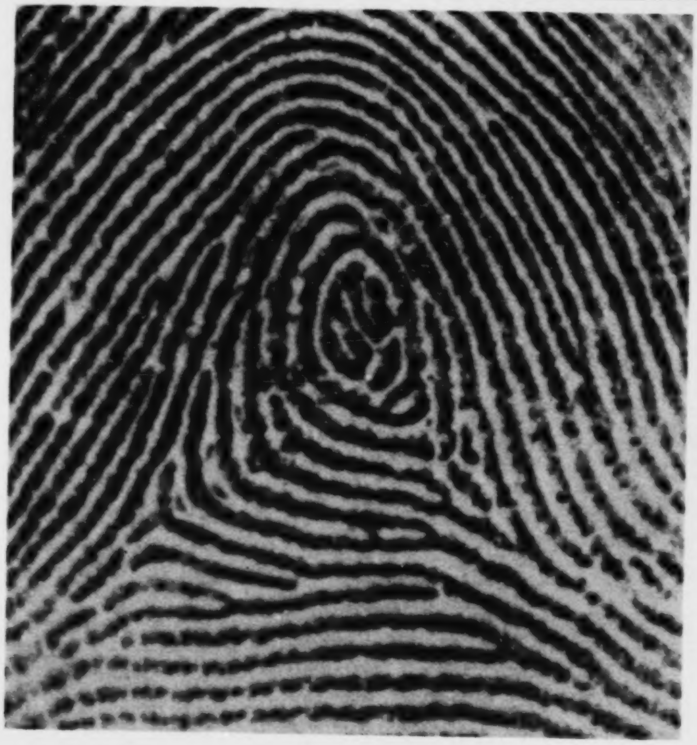

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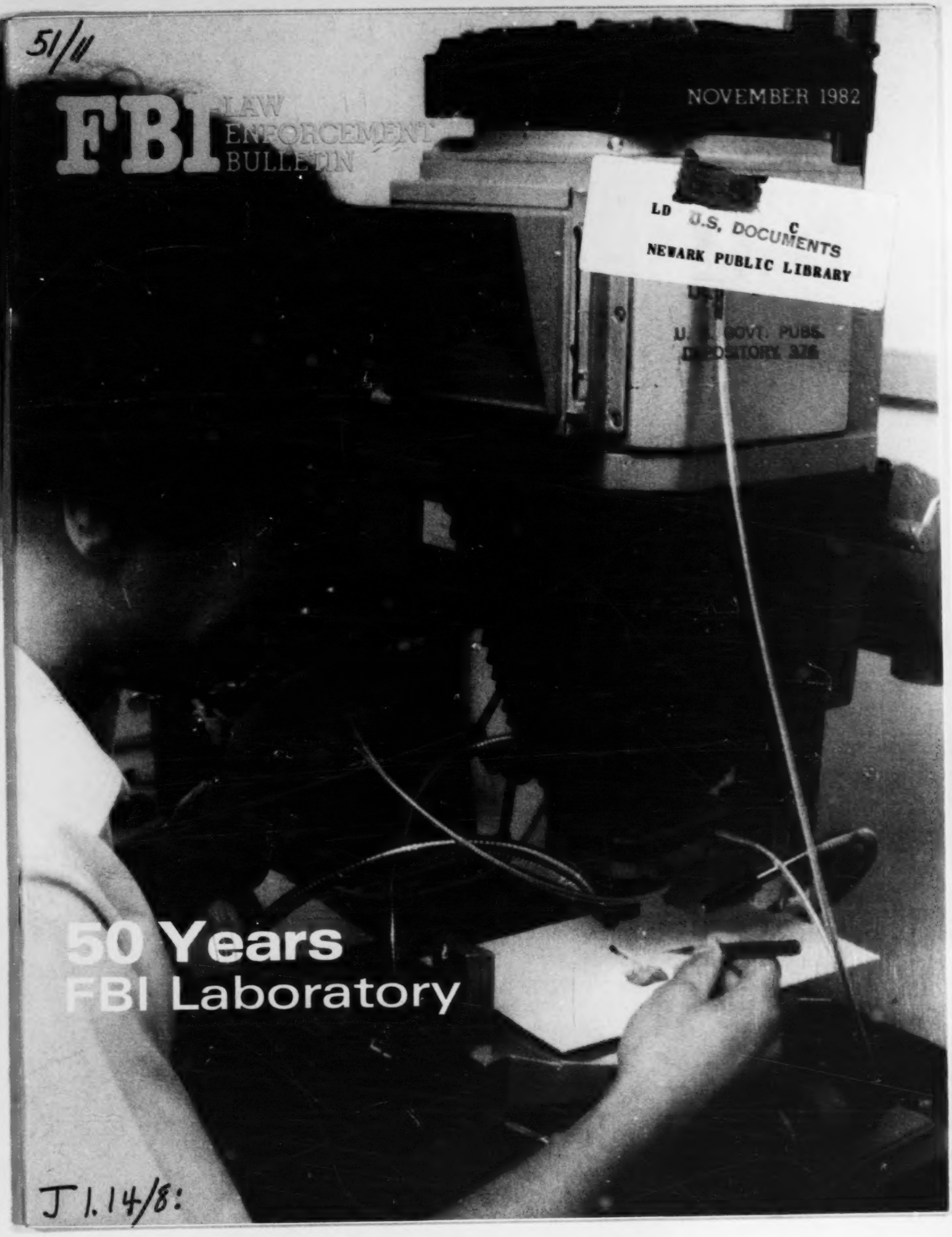

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NOVEMBER 1982, VOLUME 51, NUMBER 11

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**The Cover**
The FBI Laboratory marks its 50th year of distinguished scientific assistance to law enforcement, as noted in the Director's Message on p. 1.

**Federal Bureau of Investigation**
**United States Department of Justice**
**Washington, D.C. 20535**

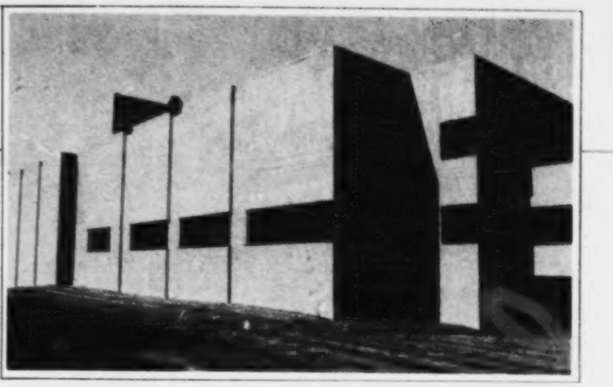
**William H. Webster, Director**

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through February 21, 1983.

Published by the Office of
Congressional and Public Affairs
Roger S. Young, Assistant Director

*Editor*—Thomas J. Deakin
*Assistant Editor*—Kathryn E. Sulewski
*Art Director*—Kevin J. Mulholland
*Writer/Editor*—Karen McCarron
*Production Manager*—Jeffrey L. Summers
*Reprints*—Mary Ellen Drotar

ISSN 0014-5688
USPS 383-310



# Director's Message

In 1932, 50 years ago this month, the FBI Laboratory was established with one examiner and one microscope. Today, the Laboratory has grown to 119 Special Agents, 309 support personnel, and an equipment inventory of $12.5 million. From a beginning of 963 forensic science examinations in 1934 (the first year statistics were maintained), the Laboratory conducted more than 51,000 examinations in 1942, and has about doubled this number every decade, reaching more than 910,000 examinations the past fiscal year.

FBI Laboratory services, including both examinations and testimony in support of the findings, are available without cost to Federal agencies and military tribunals in criminal and civil matters and to all State, county, and municipal law enforcement agencies in this country in connection with criminal cases.

As the value of forensic science became apparent to the law enforcement community, larger police departments established local crime laboratories. The number of these laboratories was rapidly expanded in the past decade and a half as a result of funding provided by the "Omnibus Crime Control and Safe Streets Act of 1968." Then, in 1973, individual State and local crime laboratory directors requested the FBI to take a more direct and active role in the areas of training and research. In 1974, the FBI began offering specialized scientific courses for State and local crime laboratory personnel at the FBI Academy. In fiscal 1981, more than 1,300 personnel were thus trained.

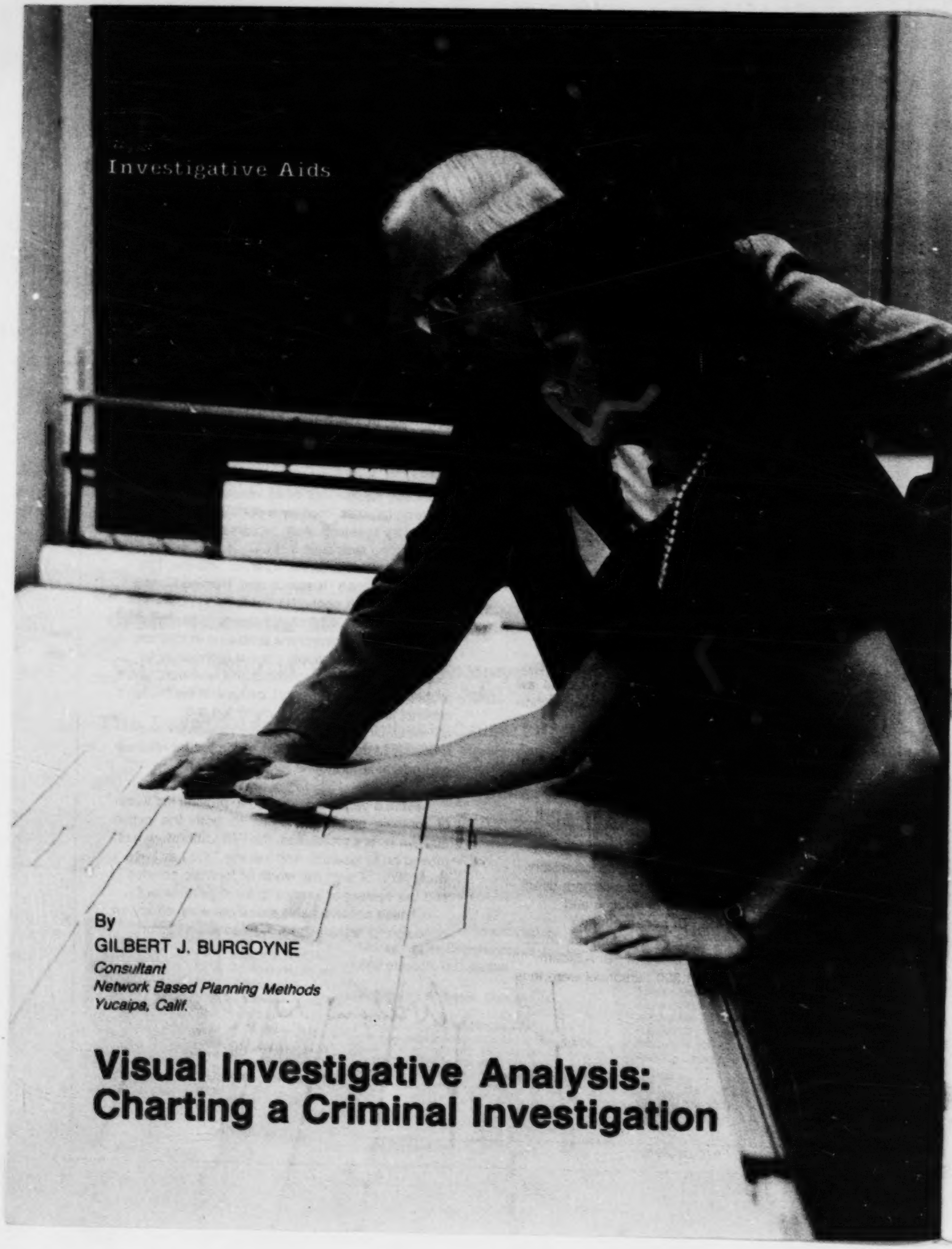
The need for forensic science research was recognized by the American Society of Crime Laboratory Directors in their recommendation for a laboratory building at the FBI Academy for this purpose. In June 1981, this building was dedicated, with 7,000 square feet of its space devoted to research facilities used by a permanent FBI Laboratory research staff, research personnel representing academic institutions, and others from specialized areas of forensic science. The Forensic Science Research and Training Center has as research goals: (1) To develop new and reliable methods in forensic science, (2) to develop new methods to overcome problems in forensic science, and (3) to apply current technology to forensic science. This training and research, given proper funding and support, can assist the Nation's criminal justice system by improving the competency of crime laboratory personnel and reducing State and local law enforcement reliance on Federal laboratories for routine case examinations.

From a beginning devoted to proving the worth of forensic science analysis to both the public and the police profession, the FBI Laboratory has moved on to research and training. This has been a vindication of both the worth of forensic science and our system of service to local government.

These achievements make our anniversary an occasion for translating pride into rededication.

William H Webster

William H. Webster
*Director*
November 1, 1982



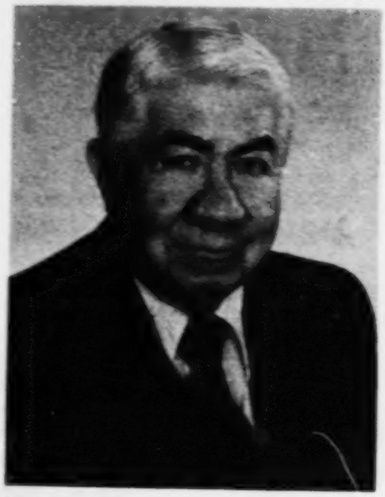
Investigative Aids

By

GILBERT J. BURGOYNE

*Consultant*
*Network Based Planning Methods*
*Yucaipa, Calif.*

# Visual Investigative Analysis: Charting a Criminal Investigation



*Mr. Burgoyne*

Police management techniques and practices have undergone many changes in the past 2 decades, and inevitably, these changes will continue and perhaps even accelerate. It is no longer enough that the police administrator depend on available manpower as the answer to the many problems facing him.

The accelerating complexities of law enforcement demand new dimensions in modern police administration. Perhaps the most profound and promising of these dimensions is the use of more advanced systems in the administration of justice. One of these systems which has slowly emerged and which has shown considerable promise is a charting technique known as visual investigative analysis (VIA).

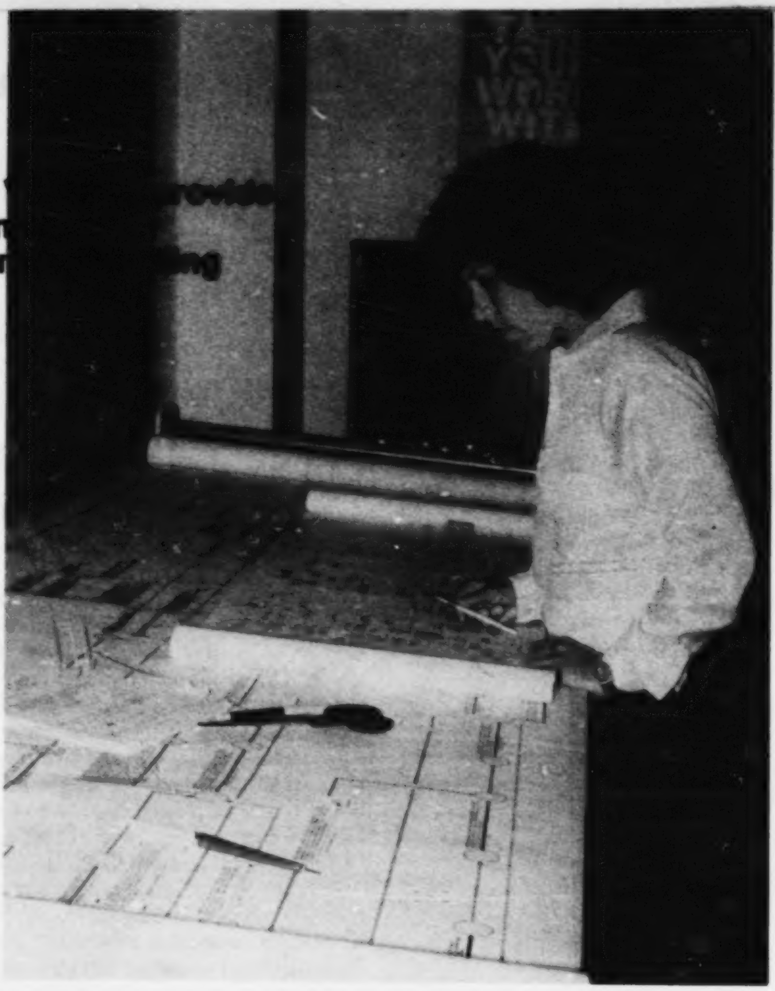
VIA had its inception in 1968 when the assassination of Senator Robert F. Kennedy provided the impetus for the most extensive investigation in the history of the Los Angeles Police Department. The magnitude of the investigation made it necessary to establish a method of planning, controlling, and monitoring the activities of the special task force of investigators assigned to the case. The department turned to a relatively new technique, PERT, which had been used previously in aerospace, mining, and construction projects with notable success. However, this was the first time PERT was applied in a criminal investigation.

Inevitably the question is raised: "What is "PERT?" PERT, together with its companion technique CPM, is a management planning, scheduling, and analysis tool which makes use of a graphic display, called a network, to depict the various tasks or activities necessary to complete a project.

PERT is an acronym derived from the words, Program Evaluation and Review Technique, which had its inception in 1957 when the U.S. Navy Special Projects Office was engaged in the development of the Polaris missile. This vastly complicated project was being conducted at or beyond the state of the art in hundreds of plants throughout the country, and the Navy was faced with the job of coordinating the work of some 3,000 contractors, suppliers, and Government agencies involved in design, development, and fabrication. As a means to control and monitor this complex and far-flung program, a research team was established in conjunction with the naval special projects office, the prime contractor, and the management consulting firm. The result was a new system, PERT, which was credited by the Navy with advancing the successful completion of the Polaris missile program by more than 2 years. Since then, it has become an important managerial tool used extensively in Government projects and in private industry.

CPM (critical path method) had its inception about the same time as PERT, and while not identical, they are closely related. The genesis of CPM took place in 1957 when a major U.S. industrial firm, having become dissatisfied with the 50-year-old standard use of bar charts and bar graphs to evaluate construction schedules and progress, decided to seek a new method to plan and schedule their many projects.

**“The general concept of**
**an innovative scientific m**
**planning, coordinating, a**
**criminal investigations.”**



A special team was assigned to explore alternatives to the traditional procedures. The approach was surprisingly simple—devise a master plan by applying logic and mathematics and then translate the plan into a management working schedule. Thus, the critical path method was conceived.

It is not the intent of this article to provide for the mechanics and intricacies of networking; it will suffice to state briefly that PERT/CPM is a set of principles, methods, and techniques for effective planning of objective-oriented work, thereby establishing a sound basis for planning, scheduling, and controlling programs.

When PERT/CPM was first applied in its original form to the Sirhan investigation, it was quickly determined it was not effective as an investigative aid because of its inflexibility. Subtle changes and modifications were made, and visual investigative analysis became a reality.

The general concept of VIA is to provide an innovative scientific method for planning, coordinating, and controlling criminal investigations. The basic element and salient feature of VIA is the network or chart. The completed chart enables an administrator, at a glance, to monitor the progress of an investigation, to identify and locate readily those reports dealing with a specific activity, to discover weaknesses and omissions in the investigation, and to deploy available resources to greatest advantage.

One of the outstanding features of the VIA technique is the ability to portray graphically the significant issues of a case. The relevance and meaningfulness of specific items of evidence can be brought out in full light of their significance to the overall investigation. Traditional problem areas, such as maintaining the chain of continuity of evidence, conducting indepth interrogations of suspects and witnesses, allocating available investigative resources, preventing the omission of pertinent facts, and preparing timely and complete reports, could be more easily resolved or overcome through use of the VIA charting technique.

During a complex investigation where traditional methods are used, an investigator may not be aware at all times of the true significance of witnesses' statements or other points of information at the time they are obtained. He may also obtain fragmented points of information without being aware that he should have explored the area in more depth. With a properly constructed network at his disposal, which will show the relativity and interdependencies of the important issues of the case, the investigator will obtain a visual perspective of the investigation, enhancing the objectivity in pursuing the investigation.

The VIA charting technique is not a panacea; it is only another tool at the disposal of the investigator. It will not "solve" cases. It will not necessarily make the investigations easier. Many times, questions to be resolved can be explicitly brought out on the chart, requiring the investigator to "dig" for answers. Oftentimes, the network will show inconsistencies in witnesses' statements or other conflicting data which may obscure some of the important issues.

When properly applied and analyzed, VIA will provide the investigator with information on which to base decisions and will present a clearly perceptive picture of the entire investigation for review by all those concerned with the administration of the investigation. The case supervisor will find the network to be an excellent means for reviewing the progress of an investigation. Much of his time spent reading reports would be considerably reduced, if not entirely eliminated. Perusal of a network that is continually updated with new information will enable him to obtain the same "visual perspective" as the investigator, and he will be better able to monitor the investigation.

The value of networking as a tool for the investigator has been stressed, but its potential as a tool for the prosecutor should not be overlooked. Many times, a complicated case, once it is presented in court, can become a real puzzle to the jury which can, in turn, unduly prolong the trial, and to say the least, delay the verdict. A pictorial presentation enables the jurors to put together the pieces of the puzzle and thus gain a clearer and uncluttered picture of the entire case.

How effective is VIA? In 1975, a questionnaire was submitted to law enforcement agencies in California which had used the VIA technique on major criminal investigations. It was believed that the collection of subjective data in the form of opinions and observations of informed persons who had the opportunity to observe and use the technique would provide a valid premise on which to establish the value or effectiveness of the VIA technique. The results of this query indicated wholehearted approval of VIA. An assistant U.S. attorney in California stated, "I have found the support and materials received from VIA to be invaluable in the preparation and presentation of the case. In my opinion, the charts and graphic analysis have been invaluable prosecutorial tools, both in and out of court." A detective commander of a major police department stated, "From an administrative point of view, it provided a rapid review of the crime and areas needing additional investigation."

However, evaluating the effectiveness and determining the feasibility of innovative methods of doing things are never easy tasks. The chore becomes exceedingly difficult when the program being evaluated does not easily lend itself to the scientific method of inquiry. The visual investigative analysis technique is within the category of programs that is most difficult to examine scientifically.

The numerous, complex variable factors involved in networking investigations make any attempt to develop scientific generalizations extremely difficult. Every crime, and every investigation that follows a crime, is unique; as such, each case requires a unique approach. The VIA method of managing investigations is designed to accommodate the most complex and peculiar requirements of any investigation.

Since the VIA technique is merely one of the many investigative tools that can be used in conducting investigations, it is difficult to isolate and analyze the results of the VIA technique. The effectiveness of investigations is traditionally measured quantitatively in terms of the number of crime clearances, arrests, and convictions. However, this does not seem to be a valid method for determining the effectiveness of investigative techniques used during the investigation. It is entirely likely that even though a case remains unsolved, the techniques used for conducting the investigation were successful and efficient. The successful or unsuccessful outcome of an investigation, therefore, does not singly appear to be a valid measure of the effectiveness of the VIA technique.

Therefore, to prepare valid and meaningful recommendations, an indepth analysis and evaluation of this technique as applied to criminal investigations are essential, taking into consideration all of the variables, including the human factor. The technique is logical and based on commonsense. People sometimes are not. It is not, therefore, surprising that "people problems" are the most difficult obstacles to successful application of VIA to criminal investigations.

The initial reaction to the VIA technique by investigators was significant. The responses varied from top management to the field investigator, and a natural desire to maintain the status quo manifested itself throughout. All agreed that good planning is a project requirement and particularly needed in the field of law enforcement. Some said that networking is the greatest

**"One of the outstanding features of the VIA technique is the ability to portray graphically the significant issues of a case."**

breakthrough in the investigation of crimes in 50 years; others believed that networking is fine for someone else, but not for them—a "gimmick," no less. It is worthy to note that those investigators who had been exposed to VIA, either by working with technicians on actual cases or in class, applauded the technique as a definite asset to the investigator. It is expected that as VIA matures and its use expands, it will include elements of link analysis and psycholinguistic analysis to enhance its value to the investigator.

Perhaps a word of caution would be appropriate at this point. The VIA method is a logical refinement and modification of established and proven methods of planning and control techniques. In theory, it is deceivingly simple, and the potential appears unlimited. Experience, however, has shown some limitations, particularly in an extensive investigation. These limitations are made manifest if technicians are not carefully selected, the training process is inadequate, the technicians have little or no knowledge of criminal investigative procedures, or when too much is expected of the technique. Once again, it must be stressed: VIA does not solve crimes; investigators solve crimes.

To illustrate the impact networking has had on criminal investigations, it seems relevant to report that an article entitled "Possibilities of PERT Planning in Criminal Investigations" was published in a Russian-language journal. The article, which has been translated into English, points out the value of networking in the administration of a complex criminal investigation. The author states:

> "From the point of view of organization of time and reducing investigation time, the application of PERT techniques when planning and organizing the investigation of complex multiepisodal affairs—affairs the investigation of which, in PERT language, requires coordination of action among many 'coexecutives' and includes hundreds and thousands of events and operations—can turn out to give the best results." [1]

While networking is an invaluable tool for the investigator, it can also assist the police administrator in other areas. The general benefits experienced by users of network planning and control include significant improvement in project planning, management control, progress reporting, identification of problem areas, communication, decisionmaking, and timesaving. All of these are translated into cost savings and more efficient management resources.

How does this fairly simple, almost obvious technique actually enable the user to gain the stated benefits? The answer is systematic, logical discipline. Obviously, the results are only as good as the effort put into the plan. By using network planning, one is subjected to a rigorous discipline which shows up illogical plans. It displays the entire project in fairly great detail from beginning to end. This alone will induce positive action. Otherwise, it is easier to put off tough choices or overlook dependencies that create conflict or dilemmas which require an immediate decision. Another reason this technique helps the manager is that a pictorial view of the interactions between activities allows him to envision a better way of doing things.

In 1975, the FBI, knowing that VIA was being used in California with notable success, decided to apply this relatively new technique to an ongoing nationwide extortion investigation. The writer was requested to prepare a VIA network on this far-flung and complex investigation, and through the use of the network, plus diligent efforts by Special Agents, a suspect was developed and indicted.

Again in 1977, the Bureau used the VIA technique on a kidnaping and murder investigation. The success achieved in these investigations resulted in the establishment of a VIA unit at FBI Headquarters. The initial staff was trained by the writer. Because of the impact VIA has had on the investigation and prosecution of major cases during the past 5 years, the VIA personnel complement at FBI Headquarters has increased from two to eight analysts. The new members of the VIA staff are now trained in the VIA technique by a training program developed by an FBI staff analyst through the expert direction of the writer. Subsequent to and/or concurrent with the VIA classroom training, the analysts are trained in FBI investigative operations and procedures and are closely monitored for a period of 1 year as they apply the knowledge they have acquired. During their tenure with the VIA group, and as experience dictates, the analysts are assigned progressively more difficult cases.

VIA as an investigative and prosecutive aid has been applied to approximately 85 of the FBI's most complex investigations centering on terrorism, organized crime, white-collar crime, and personal and property crimes. In most instances, these investigations were multifaceted and involved massive amounts of information. The relationships among the various activities and individuals involved in the perpetration of the crimes and the subsequent investigation would have been extremely difficult to perceive without application of the VIA technique. VIA provided a "map" evincing relevant information and/or a lack thereof, enabling a more thorough investigation and interpretation of information—the major goals of all law enforcement agencies. One assistant U.S. attorney provided the following comment concerning VIA's effectiveness.

> "Concerning the conduct of the investigation and its administration from a legal standpoint, the VIA networking was absolutely essential in this investigation. In terms of preparing the case—it is absolutely invaluable. You can check to see if all your evidence is covered.
>
> "The VIA networks highlighted areas that were incomplete and enabled investigators to zero in on them. We had to account for the subjects' activities on a minute-by-minute/hour-by-hour basis. If you can do that, which was essentially done in this case, it serves as an excellent aid to investigators and prosecutors during the interview of subjects and/or during discussions with defense counsels. We told the subjects we had evidence, but more importantly, we showed them we had the evidence—it then convinced them to talk."

In view of the apparent potential of VIA as an aid to law enforcement, one might ask, "Why is it not in greater use?" First, it must be stated that although VIA was introduced in 1968, it is still relatively unknown, even though VIA seminars have been conducted in many cities throughout the country during the past 14 years. Second, establishing a VIA unit and training personnel requires funding. In this day of curtailed budgets, it is difficult for the police administrator to convince the guardians of the budget that VIA is a valid and needed support. Also, there is skepticism. There are still those who say, "It's a 'gimmick,' it will never work."

Although the propitious initial application of VIA created considerable interest within the profession, the machinery of law enforcement sometimes seems to perpetuate the status quo. Change is gradual; progress seems imperceptible. But as a former chief of the Los Angeles Police Department stated: "The application of these methods will probably soon become routine in complex criminal investigations."

**FBI**

**Footnote**

A. P. Syrov, "Possibilities of PERT Planning in Criminal Investigations," *Pravovaya Kibernetika*, 1970.

# Meeting the Need for Crime Analysis Through Volunteers

By
STEPHEN STILES
*Program Specialist*
*Criminal Justice Services*
*National Retired Teachers Association*
*American Association of*
*Retired Persons*
*Washington, D.C.*

**"Crime analysis is a set of systematic analytical processes providing timely and useful information on crime patterns and trends."**

The value of crime analysis to effective law enforcement operations has been demonstrated. Programs sponsored by the U.S. Department of Justice have allowed law enforcement agencies to apply the benefits of analysis to an ever-expanding range of operational and administrative functions.[1]

From the local police administrator's perspective, today's economic realities require the greatest efficiency possible in the use of law enforcement resources.[2] Crime analysis can bring about greater efficiency, as well as effective use of resources, but the analysis process itself places manhour requirements upon the department.

Analytical processes are continually developed; however, a priority objective within the law enforcement field is the proliferation of existing techniques. The Justice Department, State and local agencies, and public service organizations are involved in this effort. The National Retired Teachers Association and American Association of Retired Persons (NRTA-AARP) are examples of public service organizations.

Some agencies are now using volunteer assistance from their respective communities to help meet the manpower requirements of crime analysis. In many cases, volunteers are retired community members who are now proving their ability to enhance crime analysis operations.

The combination of technical assistance and cost-effective implementation procedures is looked upon as a viable approach to continuing crime analysis efforts. NRTA-AARP contributions to this are but a part of a much larger effort.[3] The end result, however, is worthy of attention from all quarters.

### What Crime Analysis Can Do

Crime analysis is a set of systematic analytical processes providing timely and useful information on crime patterns and trends.[4] Information collected by the patrol officer for incident and followup reports and information received from other sources is organized, analyzed, and disseminated in usable form to officers. Crime analysis is an information tool that assists law enforcement in pinpointing crime problems in the community, allowing the officer to be more effective in his task of protecting the community by resolving problem areas.

Effective crime analysis impacts all areas and operations of a law enforcement agency by refining and distributing useful information. Analysis facilitates patrol alinement and deployment, provides investigative leads, gives direction to crime prevention efforts, upgrades administrative processes, and strengthens management decisions.

Departments implementing crime analysis have increased the investigative and crime prevention responsibilities of their patrol officers. Work assignments are based on analysis information, and officers are more accountable for crime in their sectors,

*Mr. Stiles*

including investigative followup. With training in preventive techniques, patrol officers are given the responsibility and means for preventive action based on reliable information.[5]

Crime analysis has modified the patrol deployment system in many departments to correspond with service demand. For example, one department has assigned patrol squads according to greatest need, and officers are kept on the same beats as much as possible to enhance their familiarity with the areas. The squad supervisor maintains close contact with the crime analysis unit to determine patrol deployment, assess training needs, and conduct performance evaluations. A rise in the burglary cases solved and a decline in burglary occurrences indicate the effectiveness of this approach.[6]

The following statements about crime analysis from leading practitioners in the field serve to highlight the general benefits of crime analysis to departments:

- "It has provided excellent support to tactical and strategic planning. The commitment and support of crime analysis personnel have enabled us to do so much more than we could before, such as with investigative leads."
- "Directed patrol is well structured, and the forced feedback from patrol commanders monitors the efforts and progress of their shifts."
- "We can better trace information through the system. We recently had an MO pattern that fit a known burglar who was supposedly in jail. Our analysis unit checked further and found that the guy had escaped the day before."
- "The structured information flow of systematic centralized crime analysis provides us with a total picture of the problem. Importantly, it monitors the changes in the problem as well."
- "It enables the most efficient use of personnel. When there is down time, patrol officers can address target areas identified by crime analysis."
- "The immediacy of information provided by crime analysis has increased the effectiveness of our suspect interrogations."
- "Crime analysis has significantly promoted regional information sharing among the many departments within our county jurisdiction."[7]

### Dispelling Myths

While crime analysis can be defined simply, its effects on a law enforcement agency are wide-ranging. However, the implementation of crime analysis often raises concerns that other undesirable effects may appear. Experience has disproven myths about possible negative effects of crime analysis, including:

| | |
|---|---|
| MYTH: | Crime analysis is just another "exercise"—a program for the sake of having a program. |
| REALITY: | Crime analysis is not a program in and of itself—it is a system of information support to the operations and administration of law enforcement. |
| MYTH: | Crime analysis results in more people telling officers how to do their jobs. |
| REALITY: | Crime analysis provides the information that allows the officer to better determine what he can do. |

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> **"Law enforcement agencies conducting crime analysis across the country have turned to the older community as a resource."**

MYTH: The crime analysis process will never gain internal acceptance and thus will never be used.

REALITY: Internal acceptance and credibility come about primarily as a result of useful information.

MYTH: Crime analysis could produce too much information, placing additional responsibility on personnel.

REALITY: Crime analysis identifies problem areas. It cannot distort a problem beyond its actual magnitude.

MYTH: Crime information can create external political pressure on the department.

REALITY: Information is analyzed for users *within* the department. These persons determine any external uses. The majority of crime analysis information should not go outside of the department because of tactical and legal requirements.

MYTH: Crime analysis will become a game of administrative number counting of no operational use.

REALITY: Adequate safeguards must be built into the system to protect its operational value. The primary objective of crime analysis is to provide *operational* support.

MYTH: Civilian crime analysts cannot understand the needs of the officers on the street.

REALITY: Crime analysts may be either civilian or sworn personnel.
A sworn officer generally supervises the overall operation and provides guidance to civilian personnel when needed.

MYTH: Crime analysis will change all the districts and beats.

REALITY: Crime analysis does not necessarily require any change in patrol areas. It may indicate desirable changes, but the decision remains with the responsible command staff.

There is nothing mysterious or self-serving about crime analysis. It is an information tool that serves the department's needs.

### Police Administrator's Considerations

Escalating crime and shrinking police budgets have made crime analysis a priority for effective law enforcement, but the responsible police administrator must implement crime analysis in the most cost-effective manner. Two important considerations—time and cost—accompany this implementation.

Crime analysis, in its simplest form, requires staff time to accomplish a variety of tasks. The more comprehensive it becomes, the more manhours it requires. Whether the system is computerized or manual, considerable effort goes into the preparation of information used for analysis.

A sworn police officer represents a substantial department investment. Training, equipment, salary, and benefits make the officer a much-valued resource, especially when his abilities are enhanced by law enforcement experience. The most effective use of these abilities is essential.

With the proper training, a law enforcement professional possesses the expertise needed to perform indepth, comprehensive analyses of crime patterns, trends, and strategic/tactical responses. Many support functions, however, do not require professional expertise. Volunteers today are performing these support functions, including:

1) Extraction and collection of needed information from various sources;
2) Organization and filing of collected information into usable categories for analysis (collation);
3) Rudimentary file searches for data base construction;
4) Information plotting for visual analysis;
5) Developing information dissemination instruments;
6) Administrative recordkeeping, including quality control checks; and
7) Related clerical duties.[8]

### What the Older Community Offers

Law enforcement agencies conducting crime analysis across the country have turned to the older community as a resource. Retired citizens contribute their time on a volunteer or minimum wage basis and are supervised by professional crime analysts who devote more of their time to the technical analysis function itself and to expanding the realm of information developed by their units.

Older persons are a valuable asset to the crime analysis operation. They possess abilities and characteristics that match many of the department's needs, including:

1) Availability—approximately one in every nine Americans is 65 or older. Retirees generally do not have the time-consuming responsibilities of full-time employment or raising families.
2) Skills—older persons offer a wide range of experience, knowledge, insight, know-how, and personal contacts to the departments.
3) Motivation—millions of older persons want to continue their contributions to society and their involvement in meaningful work.
4) Conscientiousness—strong work ethic and attention to detail, essential to crime analysis, generally prevail among the older population.
5) Dependability—older volunteers and workers have impressive attendance records, low turnover rates, and demonstrate steady performance in their work.
6) Influence—many older persons are actively involved in the community, have valuable contacts, and know how to get things done.
7) Support—older persons often have a strong desire to assist the efforts of law enforcement officials.[9]

The concept of older persons in law enforcement support roles is not new. It is, however, an area in which NRTA-AARP have been active for many years and have seen tremendous accomplishments. Beyond cost-effectiveness, departments drawing upon the older community have directly affected crime problems while simultaneously nurturing a community-wide responsibility for and involvement in crime reduction.[10] The public's understanding and support of law enforcement function increases with its involvement, and the overall quality of life is enhanced.

## What the NRTA-AARP Can Do

The criminal justice services section of the NRTA-AARP has been active over the past several years in working to increase the role of crime analysis in law enforcement agencies. With many agencies, this means identifying the resources and processes that help existing crime analysis systems grow. With other agencies, it is a matter of stimulating the initial development of any system at all.

By virtue of funding from the Law Enforcement Assistance Administration (LEAA), the NRTA-AARP have aided law enforcement agencies around the country in involving the older community in crime analysis. This has taken place primarily within existing integrated criminal apprehension program processes, which is another national project funded by the Department of Justice,[11] and has allowed departments to better use their crime analysts' professional training. Older workers are trained to perform the precursory support activities leading up to analysis, freeing the analysts to pursue the more technical functions that lead to crime pattern and trend identification, better officer deployment, and a host of other benefits.

The criminal justice services section has available the following materials related to crime analysis and its enhancement:

1) *Simplified Crime Analysis Techniques*—a manual on the technical development of crime analysis for the practitioner new to the processes;
2) *Older Persons In Crime Analysis: A Program Implementation Guide*—a step-by-step guide for bringing older workers into crime analysis support roles; and
3) *The Criminal Justice System: A Guide for Citizens*—an explanation of the criminal justice system in layman's terms for the older worker.

With these materials, NRTA-AARP can assist a department in developing basic analysis techniques and procedures, using outside resources, to operate cost-effectively. Such an approach is designed to encourage every department's involvement in crime analysis, yielding on a much larger scale the many benefits seen in today's working models. **FBI**

**Footnotes**

[1] For greater detail of this, see U.S. Department of Justice, National Crime Justice Reference Service, *Crime Analysis: A Selected Bibliography*, (Washington, D.C.: U.S. Government Printing Office, 1980).

[2] U.S. Department of Justice, National Institute of Justice, *Crime Analysis* (Washington, D.C.: U.S. Government Printing Office, 1980), p. 1.

[3] Ibid., p. 10.

[4] U.S. Department of Justice, Law Enforcement Assistance Administration, *Crime Analysis System Support Manual* (Washington, D.C.: U.S. Government Printing Office, 1979), p. XV.

[5] International City Management Association, *Target*, vol. 8, No. 3, 1979.

[6] Ibid.

[7] A telephone survey conducted by NRTA-AARP, March 1981.

[8] National Retired Teachers Association and American Association of Retired Persons, *Older Persons In Crime Analysis Support Roles* (An unpublished paper, NRTA-AARP, Washington, D.C., 1980).

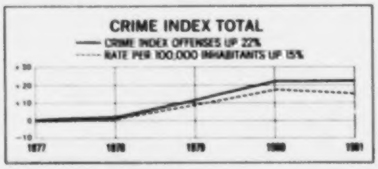
[9] Ibid.

[10] National Retired Teachers Association and American Association of Retired Persons, *Law Enforcement And Older Persons: Revised Edition* (Washington, D.C.: NRTA-AARP, 1980), section V.

[11] For more information on the integrated criminal apprehension program, see U.S. Department of Justice, Law Enforcement Assistance Administration, *IACP Reference Handbook* (Washington, D.C.: U.S. Government Printing Office, 1978).

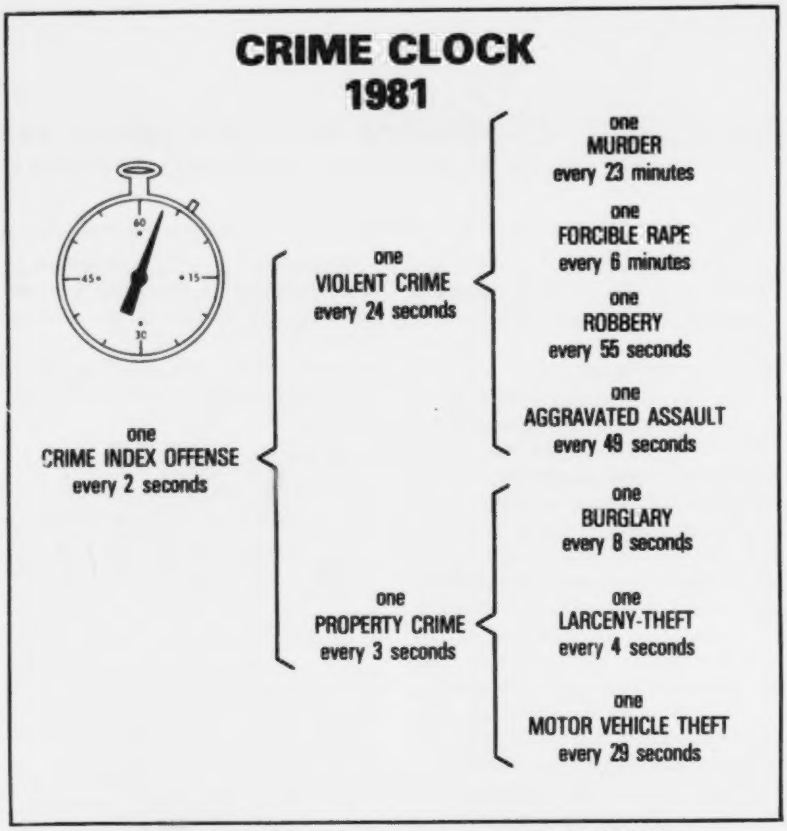
# Crime in the United States Stabilizes

Final 1981 Crime Index figures compiled by the FBI's Uniform Crime Reporting Program revealed that the estimated total of more than 13 million serious crimes reported in the United States remained virtually unchanged from the 1980 total. However, these figures represent a 22-percent increase from 1977 and a 61-percent increase from 1972. Over 15,000 city, county, and State law enforcement agencies, covering approximately 97 percent of the Nation's population, were involved in the collection of data.



## Crime Distribution

Geographically, the Southern States, the Nation's most populous region, recorded 32 percent of all Crime Index offenses. The Western States followed with 24 percent; the North Central States, 23 percent; and the Northeastern States, 21 percent. If regional figures for 1980 and 1981 are compared, the Southern States recorded a 1-percent increase, while the Western States showed no change and the Northeastern and North Central States each recorded a 1-percent decline.


CRIME CLOCK
1981
60
45
15
30
one
CRIME INDEX OFFENSE
every 2 seconds
one
VIOLENT CRIME
every 24 seconds
one
PROPERTY CRIME
every 3 seconds
one
MURDER
every 23 minutes
one
FORCIBLE RAPE
every 6 minutes
one
ROBBERY
every 55 seconds
one
AGGRAVATED ASSAULT
every 49 seconds
one
BURGLARY
every 8 seconds
one
LARCENY-THEFT
every 4 seconds
one
MOTOR VEHICLE THEFT
every 29 seconds

The crime clock should be viewed with care. Being the most aggregate representation of UCR data, it is designed to convey the annual reported crime experience by showing the relative frequency of occurrence of the Index Offenses. This mode of display should not be taken to imply a regularity in the commission of the Part I Offenses; rather, it represents the annual ratio of crime to fixed time intervals.

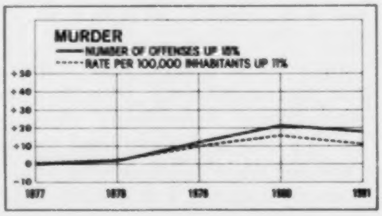
Serious crime in the Nation's cities showed virtually no change in 1981 from 1980. However, crime in suburban areas declined by 1 percent, and the rural counties registered a 2-percent decrease.

The total number of 1981 Index offenses averaged 5,800 per 100,000 inhabitants. While this rate, which relates crime to population was down 2 percent from 1980, it signified a 15-percent increase over 1977 and a 46-percent increase over 1972.

## Violent Crimes

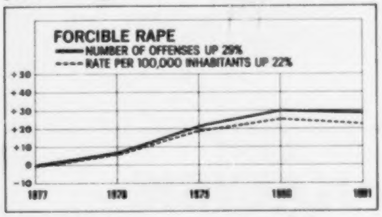
The violent crimes of murder, forcible rape, robbery, and aggravated assault, which rose 1 percent from 1980 to 1981, accounted for 10 percent of all Crime Index offenses reported. The violent crime rate was 577 per 100,000 inhabitants, 1 percent lower than in 1980.

MURDER—During 1981, 22,500 murders were reported nationwide, a decrease of 2 percent from the 1980 level. Of the murder victims, 77 percent were males and 54 percent were white. In 55 percent of the cases, victims were slain by a relative or acquaintance. Forty-two percent of the murders occurred as a result of an argument, while 17 percent took place in conjunction with felonious activities such as robbery, rape, etc. As was the case in 1980, firearms were the dominant weapons used to commit this crime.

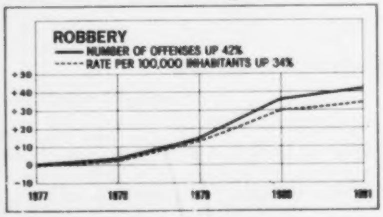


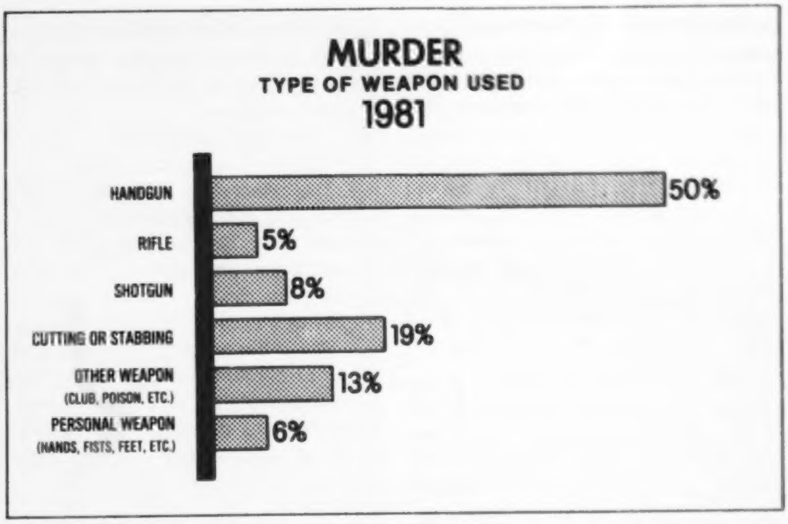
Handguns were used in 50 percent of the murders, shotguns in 8 percent, and rifles in 5 percent.

FORCIBLE RAPE—The volume of forcible rapes reported to law enforcement agencies fell 1 percent in 1981 from 1980. Of the more than 81,500 offenses reported, 76 percent were rapes by force; the remainder were attempts or assaults to rape. An estimated 69 of every 100,000 women were victims of this crime nationwide. More than half of those arrested for rape (52 percent) were males under 25 years of age.

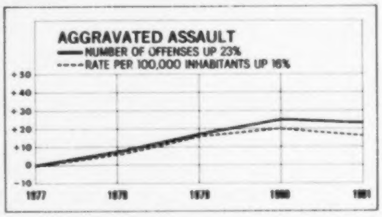


ROBBERY—Over 574,000 robberies occurred in 1981, representing a 5-percent increase from the previous year. Losses to victims were estimated at $382 million or $665 per incident. Seven of every 10 robberies took place in cities with populations over 100,000, and 52 percent were committed on the streets and highways. The perpetrators used firearms in 40 percent of the robberies, strong-arm tactics in 38 percent, knives or cutting instruments in 13 percent, and other dangerous weapons in the remainder. Nearly 3 of every 4 persons arrested for this offense were under the age of 25.





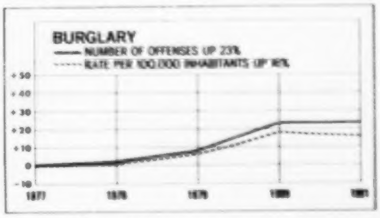
AGGRAVATED ASSAULT—A total of 643,720 aggravated assaults occurred in 1981, a 2-percent drop from 1980. Of all the offenses reported, 28 percent were committed with blunt objects or other dangerous weapons, 24 percent with firearms, and 22 percent with knives or cutting instruments. Personal weapons such as hands, fists, and feet were used in the remainder of the cases.



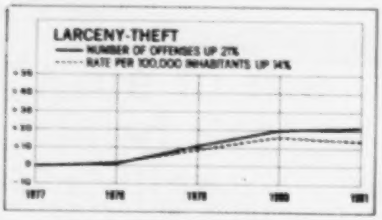
## Property Crimes

In 1981, the property crimes of burglary, larceny-theft, and motor vehicle theft showed virtually no change from the previous year. The property crime rate, 5,223 per 100,000 people, fell 2 percent during the 2-year period.

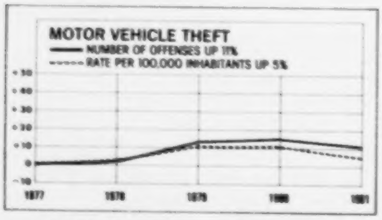
BURGLARY—The number of burglaries totaled over 3.7 million in 1981 and resulted in losses estimated at $3.5 billion. Yet, burglaries declined 1 percent in volume from 1980 to 1981, with suburban areas and rural counties each recording 2-percent declines. Burglars targeted residential property in 67 percent of the total offenses reported, and it was during the nighttime hours that 40 percent of all burglaries occurred. In 73 percent of the occurrences, forcible entry was used; 19 percent were unlawful entries (without force). The remainder were forcible entry attempts. Four of every 5 persons arrested for burglary in 1981 were under the age of 25.



LARCENY-THEFT — Larceny-theft, the highest volume Index crime, rose to more than 7.1 million offenses in 1981, 1 percent higher than in 1980. The total national loss reached $2.4 billion for an average loss of $340 per incident. This offense comprised the largest portion of total Crime Index offenses reported and accounted for over one-half of the total arrests for Index crimes. Thefts of motor vehicle parts, accessories, and contents accounted for 37 percent of all types of larceny. Thefts from buildings followed with 17 percent, shoplifting with 11 percent, and thefts of bicycles with 9 percent. More than half of the persons arrested (52 percent) were under 21 years of age. Females were arrested for this offense more often than for any other, comprising 29 percent of the total.



MOTOR VEHICLE THEFT—Motor vehicle thefts totaled more than 1 million in 1981, an average of 1 of every 150 registered motor vehicles in the Nation. The value of stolen vehicles averaged $3,173 for an estimated national loss of $3.4 billion. The number of vehicle thefts declined 4 percent from 1980 to 1981 and was down in all regions of the country for the same 2-year period. Of the stolen vehicles, 75 percent were automobiles and 14 percent were trucks and buses. Law enforcement agencies arrested an estimated 129,200 persons for this offense, of which 61 percent were under 21 years of age.



ARSON—Over 11,000 law enforcement agencies reported a total of 122,610 arson offenses during 1981. However, detailed reports showing monetary loss and types of property targeted were received on 97,202 arsons. The value of property damaged by these arsons was $914 million, an average loss of $9,399 per incident. Structures and mobile property were the most frequent targets, accounting for 79 percent of all arsons. Of all persons arrested, 42 percent were under the age of 18. Arrests for arson increased by 4 percent over 1980 and 13 percent over 1977.

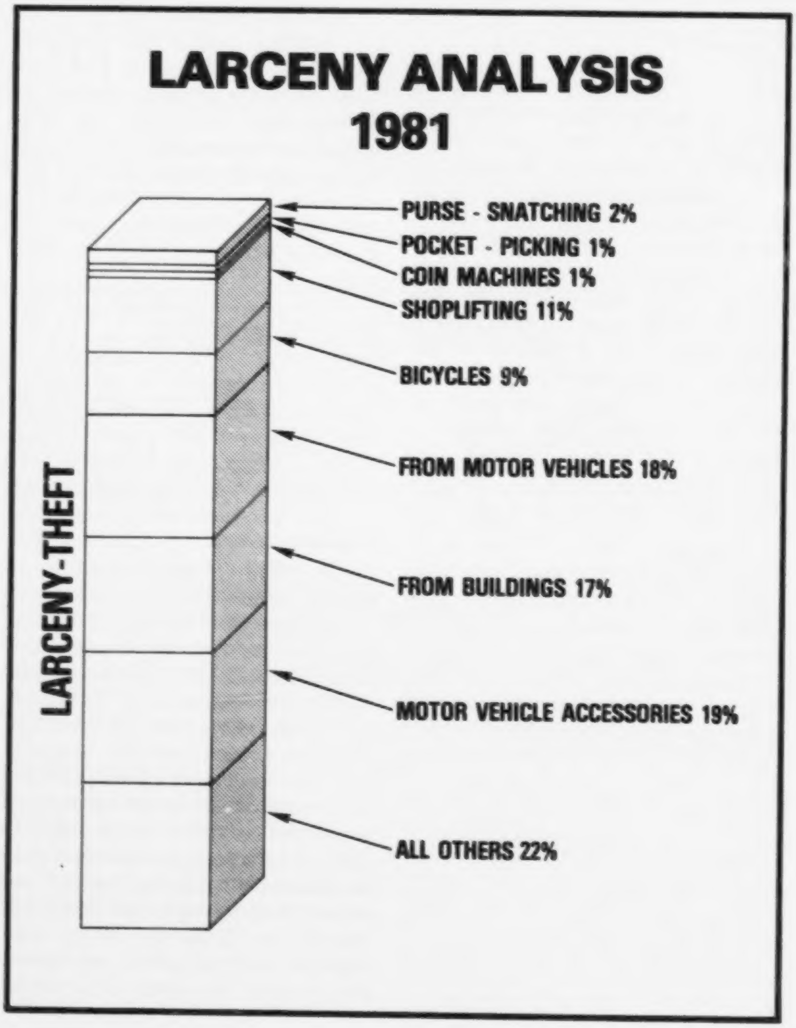
**Clearances and Arrests**

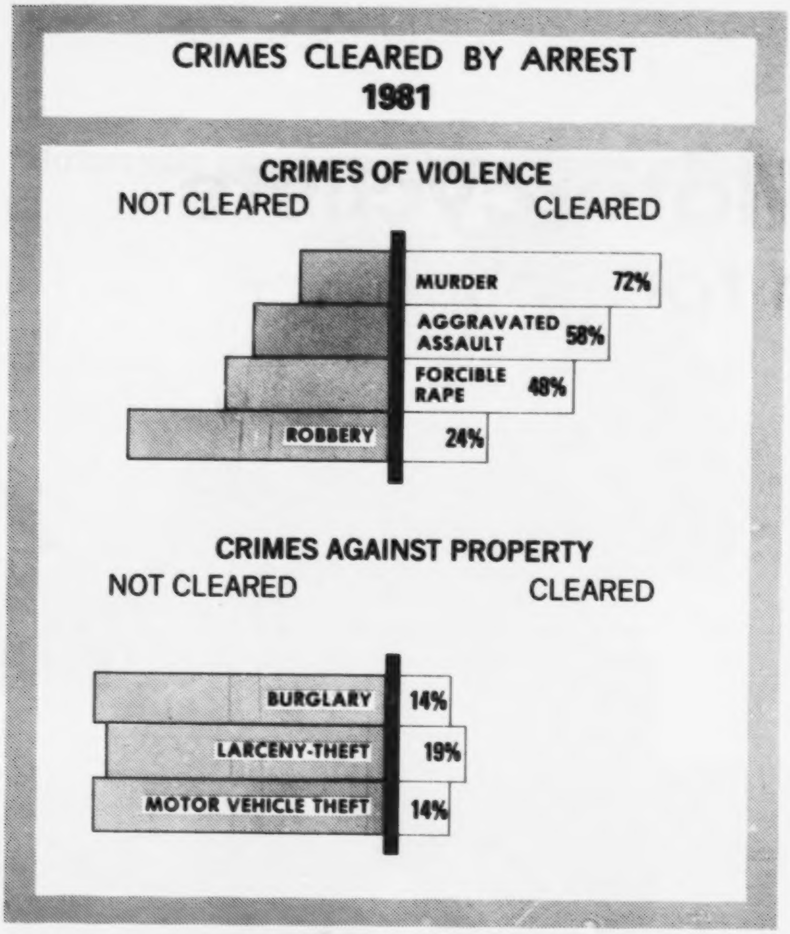
Of all Crime Index offenses reported in 1981, law enforcement agencies cleared 19 percent. Persons under the age in 18 were involved in 21 percent of all clearances which occurred.

The clearance rate for violent crimes was 43 percent—murder, 72 percent (the highest clearance rate among Index offenses); forcible rape, 48 percent; robbery, 24 percent; and aggravated assault, 58 percent.

Within the property crimes category, a 17-percent clearance rate was recorded—burglary, 14 percent; larceny-theft, 19 percent; motor vehicle theft, 14 percent, and arson, 15 percent.

An estimated 10.8 million arrests took place in 1981 for all offenses except traffic violations. Adult arrests rose 6 percent over 1980 and 17 percent over 1977, while arrests of those under 18 increased less than 1 percent over 1980 but fell 9 percent from the 1977 total. A further breakdown of persons arrested for all crimes shows that 20 percent were under the age of 18, 37 percent were under 21, and 55 percent were under 25. Arrests of males outnumbered those of females by a 5 to 1 ratio; 73 percent of all arrestees were white.





The 1981 arrests for Crime Index offenses increased 4 percent over the previous year. There was a 7-percent increase in adult arrests, but a recorded decrease of 3 percent for those under the age of 18.

### Assaults on Police

For every 100 law enforcement officers in the United States, an average of 17 were assaulted during 1981; 6 per 100 suffered personal injury as a result of the assault. In 83 percent of the assaults, personal weapons, such as hands, fists, feet, etc., were used on the officers. Firearms (6 percent), knives or cutting instruments (3 percent), and other dangerous weapons were used in the remainder of the incidents. Responding to all types of disturbance calls (family quarrel, man with a gun, bar fight, etc.) resulted in the largest portion of assaults on officers (32 percent). Four of every 5 officers assaulted were assigned to vehicle patrol.

### Law Enforcement Officers Killed

During 1981, 91 local, county, and State law enforcement officers were feloniously killed in the line of duty, representing a 13-percent decline from the previous year when 104 officers were slain. The activity claiming most officers' lives (19) was responding to disturbance calls. In 95 percent of the slayings, firearms were the weapons used. Law enforcement agencies were successful in clearing 81 of the 91 murders. **FBI**

# Outlaw Motorcyclists
## A Problem for Police

## (Conclusion)

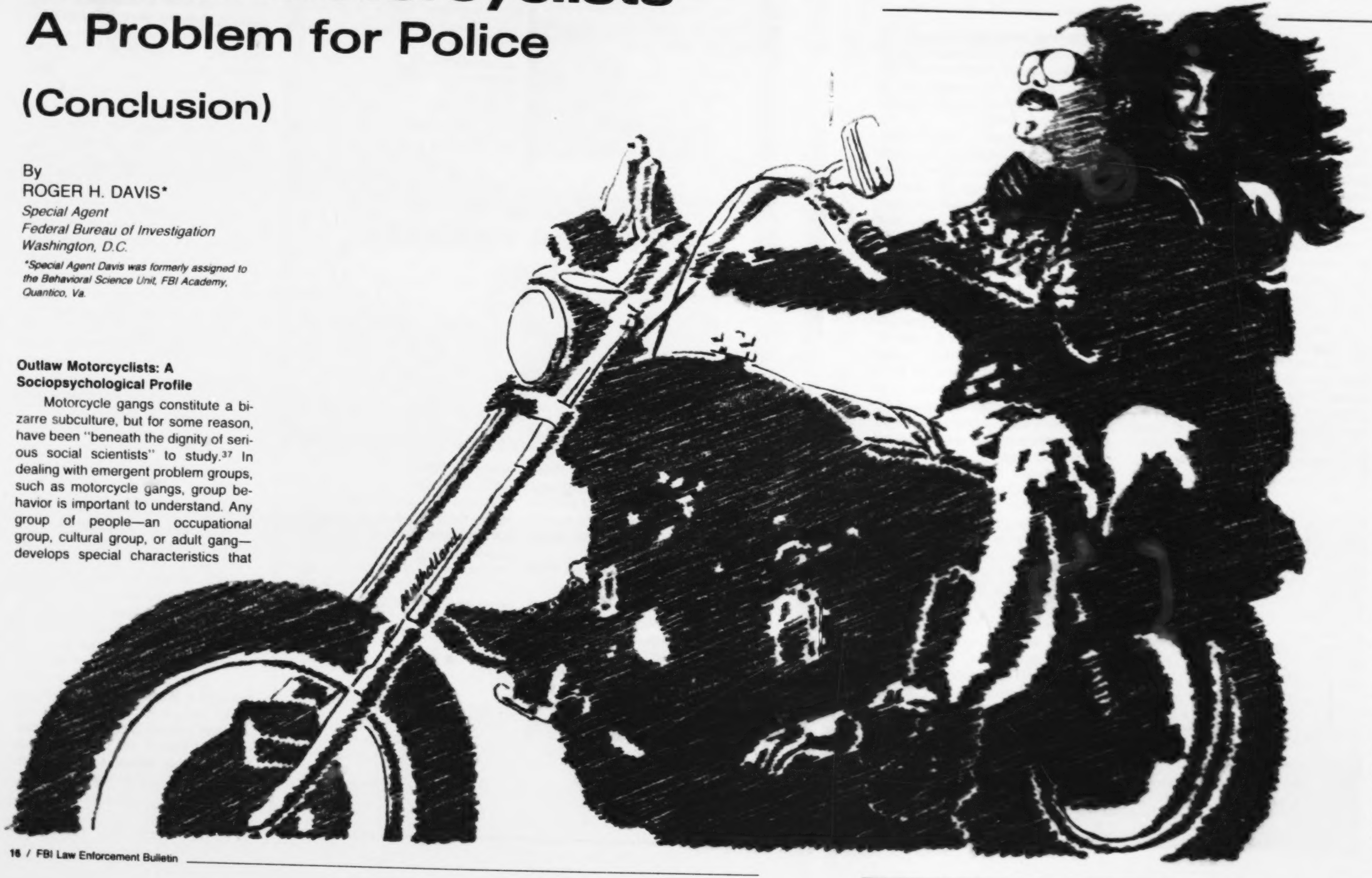
By
ROGER H. DAVIS*
*Special Agent*
*Federal Bureau of Investigation*
*Washington, D.C.*

**Special Agent Davis was formerly assigned to the Behavioral Science Unit, FBI Academy, Quantico, Va.*

### Outlaw Motorcyclists: A Sociopsychological Profile

Motorcycle gangs constitute a bizarre subculture, but for some reason, have been "beneath the dignity of serious social scientists" to study.[37] In dealing with emergent problem groups, such as motorcycle gangs, group behavior is important to understand. Any group of people—an occupational group, cultural group, or adult gang—develops special characteristics that set it apart from all others. A subculture may be based upon regional characteristics, common traits, occupations or interests, and may carry with it certain styles of dress and behavior.

**"Motorcycle gangs constitute a bizarre subculture. . . ."**



A motorcycle gang subculture is based upon a number of common factors, including a mutual interest in motorcycles. Other characteristics, however, also draw people to outlaw gangs. Outlaw gangs differ from many other groups in that their behavior goes beyond the dominant characteristics that set many other groups apart. Outlaw gang members challenge dominant features of American society, not only with their criminal behavior but with overt actions intended to shock. The shocking behavior we often see is, in fact, an open break with the value system of society.[38]

Language can be a component of subculture, and the language of an outlaw gang member sets him apart from other groups. An outlaw motorcycle gang member's language is saturated with vulgarity and with terminology that denotes a different meaning to an outsider. Terms such as "ape-hangers," meaning high-rising handlebars, or a "fash truck," a van that follows the gang's motorcycle formation, are examples.[39]

Although these behavior patterns are subcultural characteristics, an understanding of the gang subculture is important because a look at the world as seen through the eyes of a gang member may aid the police officer in being more effective in dealing with motorcycle groups. Such an understanding is critical, since indications of future gang activities point toward a shift in behavior from the unruly free-wheeling individualist of the 1950's and 1960's to the older, wealthier, and more deeply connected outlaw of the present.

*Special Agent Davis*

Persons from different subcultural groups behave in ways that differ from those of the mainstream of American society. As one social scientist explained, value orientations differ among varying groups of people because the views and beliefs people have are the products of learning and group relations.[40] Most members of outlaw gangs are from lower or lower middle class levels of American society, and as such, bring with them their class-associated behaviors. Criminologist Walter Miller suggests that lower class people are characterized by distinctive values which not only differ from the values of the majority of American citizens but also conflict with our legal code.[41] As individuals with like values become more and more involved with outlaw gang members, some of these values are accentuated, reinforced, and accepted as modes of behavior within that group.

## Gang Member Initiation

The process through which a potential member is assimilated into a gang is interesting. When a person expresses a desire to become a part of the group, he is sponsored by a member, is designated a probate, and serves a period of time in that status. The actual time period varies. With some groups it is a vague period that terminates when a group consensus is reached that the probate has met the test. Membership is gained after the process of assimilation and "testing" is satisfactorily completed. During the probationary period, the probate is required to submit to the desires of gang members, wait on them, and run errands. Some outlaw gangs have levied other requirements on probates, including the commission of felony violations witnessed by a member. These requirements seem to vary with the confidence level the group has in any particular probate. Some groups may require probates to commit one or more criminal acts, while others have no such requirements.

The probationary period is a time of testing, but group influence on what behavior is desirable and what is undesirable is clearly taught. The probate learns that bizarre, shocking behavior is a way to "show class" and gain status. Criminal behavior may also be seen as desirable. During the probationary period, the probate comes to see deviant behavior as appropriate in his new role. Witnessed criminal behavior serves as a test to those probates whose reliability and loyalty to the group are questioned. It also serves to both filter out potential police informers and give the group some leverage over members. Outlaws believe that if some members have witnessed others commit a felonious act, the group's code of silence is more easily enforced.

Frequent close contact with group members, the teaching of group norms, and the membership requirements all mold the probate. He changes not only his behavior but his identity. The new identity is evident in the behavior that follows, which includes a symbolic attachment to the group represented by tattoos of the club logo appearing on members' bodies, especially on arms and backs.

Individual club names for some become the only names they are known by within the group and provide both a special personal identity and a group identity. Names such as Flapper, Spider, Greaser, Loser, Roach, Wild Man, and Zit are typical.

Outlaw gangs are ritualistic groups, and the importance of gang rituals in building probate loyalty and group cohesion should not be overlooked. Rituals, such as initiation ceremonies, funeral and wedding ceremonies, meetings, travel formations, and required motorcycle rallies, are significant events pulling the group together. Gangs exhibit their ritualistic nature in wearing certain patches for participation in events, in certain deviant acts, or for symbolically expressing the group position on issues such as drug usage (indicated by the patch "13") or motorcycle helmet laws.

When a probate has passed the test of acceptance, he will be formally initiated into the group. The initiation process is a ceremony that establishes a totally new identity with the group, and at the same time, serves to somewhat sever a new member's former identity with mainstream society. The initiation ceremony itself varies from club to club. Universally, however, it is an event where the club jacket (colors) is initiated along with the new member. The person being initiated is sometimes required to lie on the ground while members pour oil or pig urine over them or while they urinate, deficate, or vomit on them. Whatever the process, the event itself provides a formal acknowledgement that the initiate is now part of a special society.

**Hopelessness**

Since outlaw gang members are primarily from the lower class, they hold values that are associated with persons at that societal level. As individuals with those values drift together and form gangs, some behavior is reinforced, and some characteristics become extreme. One class-level characteristic prevalent among gang members is hopelessness. The gang's existence seems to be the result of a need to deal with bitterness toward society. Members have little hope of succeeding in society in terms of living up to societal expectations that require achievement and education. The gang offers an answer—it provides security for misfits in society. George Wethern, a Hell's Angel turned Government witness, identified the strong connection between his psychological needs and his gang associations when he said, "My self-esteem and my deepest friendships were bolted to my motorcycle." [42]

A poem in a magazine widely read by gang members typifies the hopelessness that pulls a member toward gang associations:

> My dog has fleas and doesn't know
> where to scratch, my bike won't run
> and I have no place to crash, I just
> spent the day getting food from the
> trash, I think I'll go and score me
> some grass.
>
> This o'l world ain't treating me right,
> it's the same old way from morning
> till night. I try being peaceful and end
> up in a fight, I'll just smoke a number
> and get my head right.
>
> I go look for a job and get no place, I
> smile at my friends and get slugged
> in the face, I keep telling people I'm
> not running a race, I think I'll sit down
> and get stoned just a taste.
>
> My chick just split with another man,
> I lie in the sun and can't get a tan,
> when I'm out in the streets there's
> always The Man, I'll go to a station
> and smoke in the can.
>
> Well, that's my story from day to day,
> it never varies in any way, so if you
> need me—I'll be away, lying
> somewhere and smoking the hay.[43]

**"An outlaw gang is structured to allow the group its own standards, rules, rituals, status requirements, and tests to pass."**

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The outlaw code is a code of mutual support—one for all, all for one. Mutual support combats the feeling of hopelessness and provides for some individual security needs. The gang-code requires that members rally to each other's aid, and evidence is mounting to indicate that the credo of mutual support extends to an opportunity to provide for financial security, as well. According to a former Hell's Angel, ". . . cohesion (no longer) was strictly a matter of fraternal pride. 'It was an insurance policy protecting our livelihood and keeping us out of the slammer. . . .' By the late 1960's being a Hell's Angel had become a full-time job for many and at least one income supplement for most." [44]

The profits some gang members make in crime offer ample opportunity for members who so desire to "get a piece of the action." The group supports this activity in tangible ways. Bond money is quickly obtainable from club coffers or through loans from members. When 11 Hell's Angels were indicted in San Francisco, they were able to raise more than $3 million in bail money, and when freed, they drove away in a limousine.[45]

The gang also fills other voids in its members' lives. Status and recognition from society, at large, have been withheld from most persons attracted to motorcycle gangs. The gang meets those needs by offering a special status with the group which comes with bizarre and sometimes criminal behavior. Where attaining meaningful roles in life has been difficult for the outlaw biker, the club offers specific group roles and the status, responsibility, and respect that follows.

## Group Structure

Social scientists have studied secret societies and find a remarkable variety of formal and informal group structures dependent upon the centralization of control.[46] Outlaw gangs have an organizational structure that includes a group president, vice president, secretary, treasurer, enforcer, and road captain. In some gangs, the structure of individuals involved in criminal activities may resemble the organizational hierarchy. This seems to be more the case among older groups, such as some Hell's Angels chapters. For other groups, however, the criminal network associated with the gang has included connections among gang members and persons only tangentially associated with the group. In some of these instances, the criminal structure bears little resemblance to the formal club hierarchy.

Groups with a hierarchical criminal structure are of particular concern to law enforcement because the structure is an indicator of a movement toward a more deeply rooted criminal organization. According to a member of the Hell's Angels, ". . . club structure was easily adapted to drug trafficking. All essential jobs could be filled with club members—distributors, dealers, enforcers, transporters." [47] With solidifying criminal organization, law enforcement efforts targeted against such groups also become more difficult. Because of this movement by some groups toward a deepening involvement in criminal activities, police officials warn of the necessity for early law enforcement intervention.

An outlaw gang is structured to allow the group its own standards, rules, rituals, status, requirements, and tests to pass. Within these outlaw subcultures, certain universal characteristics appear.

Strength or toughness appears as a universal gang requirement that seems to confer status. Members flaunt their tough image.[48] They seem obsessed with height, muscles, and obesity. Tattoos are particularly prevalent. Social scientists who have studied tattoos and established a relationship between maladjustment and tattoos report that persons with large numbers of tattoos tend to be more deviant, hostile, impulsive, and sociopathic than persons without tattoos.[49] Tattooing by gang members is not only indicative of possible maladjustment and a desire to identify with the gang but is sometimes an outlaw group requirement.

The motorcycle itself is an extension of this concern with masculinity and is used not only to attract attention but as an expression of power. Weapons are also an outlaw obsession and appear as a further extension of power and masculinity.

A sexual fertility theme is consistently present among outlaw bikers.[50] Sex rituals are occasionally included as part of the initiation ceremony, club meeting, or motorcycle run. Sexual "achievements" by members are rewarded by the group, are seen as conferring status, and are formally depicted by various colored jacket patches denoting witnessed sex acts. In effect, these status symbols are "merit badges" for deviant acts.[51]

Risk-taking behavior is also prevalent among gang members. Shocking behavior and hedonism bring status that comes with the group's distortions of society's values.

Members of outlaw motorcycle gangs, particularly those attracting police attention, frequently have dominant personality characteristics. The sociopathic personality is not only the most common criminal personality but also the most dangerous and difficult to identify and is characterized by a lack of guilt or remorse.[52]

The sociopathic outlaw biker believes the world wants to be like him. He is OK—it is everyone else who is out of step. Although appearing tightly bonded to the group, the outlaw biker is a free spirit who has very little loyalty to others. His essential commitment is to himself. This characteristic makes him a potential informer, but only in those instances when there is clearly some benefit in it for him. Police officers working with this type of personality find that the gang member is seldom targetable until after he is charged with a crime and is faced with the choice of either informing or going to prison. Interestingly, the gang member exhibiting this personality needs to prove himself constantly through bizarre or criminal behavior. The group allows him an excuse to become deviant to impress his brother gang members. This type of person is self-centered and has difficulty with interpersonal relationships. Even within the group, he has difficulty keeping close friends because of his irresponsible and cynical nature.

The sociopathic group member often has little tolerence for frustration. He externalizes life pressures by blaming others for his problems. This inclination to place blame elsewhere is combined with an impulsiveness that produces an individual who fails to think through the consequences and irrationality of his crimes. It follows, then, that a sociopathic gang member will often have a police record that appears to show no pattern of criminal specialty. Rather, because of his unpredictable nature, he is often involved in a variety of crimes and is occasionally motivated by impulse.

Police dealing with gang members know about the impulsive nature of gangs. An incident in Houston, Tex., exemplifies the dangerousness of some gang members. A member of the Conquistadors gang, reacting to the discovery that an 11-year-old boy had been fishing in a pond on the gang member's property, fired an M-2 machinegun into the boy's home, injuring the boy.[53]

Of concern to police is that this kind of impulsiveness is often connected with violence. Not only does this type of person act out his tensions, but he has no worry or remorse about his behavior. He feels no remorse because, in fact, he feels little guilt. He reacts, often with violence rather than worry, about what is bothering him. He does not learn from bad past experiences because he gives them little thought—he is simply reactive.

A sociopathic gang member may exhibit deceitful and manipulative behavior, but be likeable on the surface. When it is to his advantage, he puts on

**"The extent of criminal involvement of outlaw motorcycle gang members is extensive, and the behavioral nature of the group is complex."**

a good front, becomes outwardly friendly, and feigns repentance and remorse. Officers experienced with gang members of this personality style know, however, that this friendly disposition is only a temporary first impression.

Motorcycle gangs are particularly attractive to persons exhibiting some of the tendencies discussed above—they are mutually supportive. To the sociopathic gang member, violence is exciting and easy, since he feels no anxiety or guilt for what he has done. The group, in turn, needs his muscle to establish and maintain its reputation and to support and enforce criminal activities. The group meets his needs in turn for his daring. Since the sociopathic personality style is frequently encountered in outlaw gangs, officers who handle gang investigations have learned to use extreme caution with the members.

### Gang Women

A final important aspect of gang investigations and an aid to an understanding of gang behavior is the role of women and their association with the gang. Although women are usually not gang members, they perform an important function in many gang-related crimes. Initially attracted because of the excitement gang life offers, many women are later held involuntarily or stay out of fear.[54] They may be the "property" of one member only or used by several gang members. The female role is that of a servant. Women are looked upon as objects to be used for sexual, criminal, or personal purposes. The women who allow themselves to remain in this role seem to be best characterized as inadequate personality types. They have relatively poor judgment, not because they do not care but because they are inept. Gang women feel guilty for failing to live up to the expectations of others; they are also less reactive to pressure than their male associates. They seem to internalize life's pressures rather than blaming others. Consequently, gang women are attracted to the dominant personalities of some gang members and are easily used by them. Because of fear and a relatively low level of self-esteem, and often simply because of no place to go, the gang "old lady" or "mama" feels unable to break away. Instead, she develops a strong dependency. Not unlike some battered women, she may even accept responsibility for being abused and may feel guilty for not living up to a gang member's expectations.

For many gang women, sex becomes a means to establish intimacy. The need for affection and self-esteem is strong, and exploitive sexual relations with male members and associates become confused with affection.

It is, in part, because of these behavioral dynamics that officers investigating gang activities often have difficulty developing gang women as informants. Fear and the need to depend upon gang men produces a loyalty that is difficult to overcome. Investigators often find gang women most helpful with information when their associations with gang members weaken and loyalties shift. Unfortunately, information received then is often outdated.

### Conclusion

The extent of criminal involvement of outlaw motorcycle gang members is extensive, and the behavioral nature of the group is complex. There is no easy path to dealing with the criminal activities of these groups. Any law enforcement officer who has investigated crimes by outlaw motorcycle gang members knows the lengthy plodding effort these complex cases require. Techniques that are, however, essential in gang investigations include the development by a gang investigator of an understanding of the group's "culture" and the ability to apply knowledge of gang personality types and behavior characteristics for the purpose of more effective information-gathering from gang members. **FBI**

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**Footnotes**

[37] Randal Montgomery, "The Outlaw Motorcycle Subculture," *Canadian Journal of Criminology and Corrections*, vol. 18, No. 4, October 1976, p. 332.

[38] Although the term "subculture" will be used throughout this article to refer to customs and beliefs of outlaw motorcycle gangs, a more specific term "contraculture" seems appropriate. See J. Milton Yinger, "Contraculture and Subculture," *American Sociological Review*, vol. 25, No. 5, October 1960, p. 628. In a contraculture, the value conflict with society is central. Outlaw gangs are contracultural groups in the sense they appear as "subsocieties" with emergent norms in conflict with society.

[39] *Royal Canadian Mounted Police Gazette*, vol. 42, No. 10, 1980, p. 37.

[40] Edwin H. Sutherland, *Principles of Criminology* (Philadelphia: J. B. Lippincott, 1947), p. 6.

[41] Walter B. Miller, "Lower Class Culture as a Generating Milieu of Gang Delinquency," *Journal of Social Issues*, vol. 14, No. 3, 1958, p. 8.

[42] Wethern and Colnett, supra note 20, p. 63.

[43] P. Overholtz, untitled, *In the Wind 6*, No. 6, (Burbank, Calif.; Paisano Publications, 1981).

[44] Wethern and Colnett, supra note 20, p. 108.

[45] Ross, supra note 1.

[46] Bonnie H. Erickson, "Secret Societies and Social Structure," *Social Forces*, vol. 60, No. 1, September 1981, p. 188.

[47] Wethern and Colnett, supra note 20, p. 336.

[48] Montgomery, supra note 37, p. 336.

[49] Robert J. Howell, I Reed Payne, and Allan V. Roe, "Differences Among Behavioral Variables, Personality Characteristics and Personality Scores of Tattooed and Nontattooed Prison Inmates," *Journal of Research in Crime and Delinquency*, vol. 8, No. 1, January 1971, p. 37.

[50] Montgomery, supra note 37, p. 336.

[51] *RCMP Gazette*, supra note 39, p. 21.

[52] Thomas Strentz and Conrad Hassel, "The Sociopath—A Criminal Enigma," *Journal of Police Science and Administration*, vol. 6, No. 2, January 1978, p. 135.

[53] Burke Watson, "Kill All the Kids," *Houston Chronicle*, Houston, Tex., July 31, 1980.

[54] *RCMP Gazette*, supra note 39, p. 18.

# PROBABLE CAUSE: INFORMANT INFORMATION

## (Part I)

By
ROBERT L. McGUINESS
*Special Agent*
*FBI Academy*
*Legal Counsel Division*
*Federal Bureau of Investigation*
*Quantico, Va.*

*Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.*

The language of the fourth amendment is clear in requiring that warrants be issued only upon a showing of probable cause.[1] And while it has been said that "in dealing with probable cause . . . we deal with . . . the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians act,"[2] the drafting of the probable cause affidavit, especially when the information comes from informants and other secondhand sources, is one of the most technical and complex aspects of the law confronting a law enforcement officer. That perhaps the majority of appellate court decisions involving the question of probable cause deal with information from informants,[3] attests to both the extensive use of informant information in establishing probable cause and the intricacies of the law in this area. This article will address the principles of probable cause with respect to employing information from third parties and will provide a framework for drafting a warrant affidavit that will be free from successful defense attack.

### The Road to *Aguilar*

The major Supreme Court case concerning the use of secondhand (hearsay) information in establishing probable cause is a 1964 decision, *Aguilar* v. *Texas.*[4] Four prior cases, *Nathanson* v. *United States,*[5] *Giordenello* v. *United States,*[6] *Draper* v. *United States,*[7] and *Jones* v. *United States,*[8] set the stage for *Aguilar.*

The 1933 case of *Nathanson* v. *United States*[9] established the principle that merely stating that one has "cause to suspect and does believe that certain merchandise" is at a particular location is not enough to establish probable cause; the facts upon which that belief are based must be set forth. Twenty-five years later, in *Giordenello* v. *United States,*[10] the Supreme Court ruled that simply leaving out the "suspect" and "believe" language of *Nathanson* and substituting a declarative proposition therefor does not constitutionally fare any better. Thus, a complaint filed for an arrest warrant which merely stated that "Veto Giordenello did receive, conceal, . . . narcotics drugs" was found to be conclusory and constitutionally deficient; personal knowledge on the part of the officer-affiant is not to be presumed.

Explicitly left open by the Court in *Giordenello* was the question of whether probable cause could ever be based solely on hearsay information. A partial answer to this question was furnished in the next two cases. In *Draper* v. *United States,*[11] decided in 1959, a year after *Giordenello,* the Supreme Court held that probable cause could be based upon information received through an informant if it were substantially verified by an officer's personal observations. In 1960, another step was taken. In *Jones* v. *United States,*[12] the Court held that an informant's information could establish probable cause if there existed a "substantial basis for crediting it." The substantial basis in *Jones* consisted of the following facts:

1) The informant had "given information on previous occasion . . . which was correct";

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2) The same information, regarding the subjects' illicit trafficking in narcotics had been given to affiant "by other sources of information"; and
3) Both subjects had previously admitted to the use of narcotic drugs and displayed needle marks as evidence of same.

In 1964, the Court took the final step in *Aguilar* v. *Texas.*[13] Two Houston police officers, seeking a search warrant to search defendant's house for narcotics, filed an affidavit which read as follows:

> "Affiants have received *reliable information from a credible person* and do believe that heroin, marijuana, barbiturates and other narcotics and narcotic paraphernalia are being kept at the above described premises for the purpose of sale and use contrary to the provisions of the law." [14] (emphasis added)

While the Supreme Court found this affidavit to be constitutionally defective, since it again merely set forth the conclusions of the officer, the Court held that a warrant could be issued on the basis of hearsay information alone if the magistrate were informed of:

1) "[S]ome of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were," and
2) "[S]ome of the underlying circumstances from which the officer concluded that the informant . . . was 'credible' or his information 'reliable.' " [15]

This has come to be known as the *Aguilar* two-pronged test.[16] It applies to all cases involving the use of hearsay information in establishing probable cause, whether it be probable cause to search, as in *Aguilar,* or probable cause to arrest.[17]

### The First Prong: "Basis of Knowledge"

The first prong of the test, the informant's "basis of knowledge,"[18] calls for the officer explaining *how* the informant knows the information reported. Without this, it will not be known whether the source merely suspected the information tendered, perhaps gathering it from a rumor circulating in the area, or whether the information is based upon his personal knowledge or the personal knowledge of others.[19] Satisfying this part of the test usually takes the form of a statement that "informant saw . . ." or "was told . . ." the information furnished. Chart 1 shows how the statement from the informant in *Aguilar* could have been drafted to satisfy the

*Chart 1*

**Language to Show Basis of Knowledge of Informant**

**On January 1, 1960, affiant was advised by a confidential source that on December 31, 1959 [or within the past 3 days], source *saw* heroin packaged for sale at 509 Pinckney Street, Houston, Tex.**

**Source further advised that the circumstances under which source saw this heroin were that Nick Aguilar, who source knows from previous contact to reside at such address, offered source the heroin for purchase. Aguilar told source that what was offered was in fact heroin.**

**"'. . . when a confidential informer is shown to be unusually reliable, the magistrate may place added credibility in such information in the affidavit as reveals the precise source of the informer's knowledge.'"**

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first part of the test. The first paragraph of this statement in chart 1 standing alone is generally found to be sufficient. The bracketed material can be substituted for an exact date. This may help to protect the identity of an informant. As long as the period selected keeps the information from being attacked on grounds of staleness,[20] such statements are not invalid and have been present in affidavits that were favorably reviewed by the Supreme Court.[21] It appears to be a good idea for the officer to place the date he received the information in the affidavit, since some courts are less inclined to find information stale where the officer has endeavored to act upon the information as soon as received.[22]

The second paragraph of the statement in chart 1 further details the circumstances under which the informant saw the evidence and how the informant concluded that it was in fact narcotics. This paragraph also indicates that the person who offered the narcotics lives there, thus eliminating any question that the offeror may have been a casual visitor to the premises, taking the narcotics with him when he left. Indicating that *Aguilar* told the informant that the substance was narcotics eliminates a defense attack that the statement "saw narcotics" is conclusory.[23] Besides a statement from the seller establishing that the substance is narcotics, this fact may be shown by: 1) Evidence that the informant has a familiarity with narcotics; [24] 2) observations by the informant consistent with the use or preparation of narcotics; [25] and 3) actual purchase and testing of the substance.[26]

Merely stating that an informant has "personal knowledge" of an event, without detailing the fact that he saw or observed certain events, should be avoided. Courts have held that such assertions are conclusory and legally insufficient.[27]

In the absence of a showing as to how the informant gathered his information, the first prong of the test may be satisfied if the information is otherwise highly detailed, the idea being that detailed information implies personal knowledge. This principle was established in *Spinelli* v. *United States.*[28] Regarding this, the Court in *Spinelli* stated:

> "In the absence of a statement detailing the manner in which the information was gathered, it is especially important that the tip describe the accused's criminal activity in sufficient detail that the magistrate may know that he is relying on something more substantial than a casual rumor circulating in the underworld or an accusation based merely on an individual's generally reputation."[29]

The *Spinelli* Court made reference to the earlier case of *Draper* v. *United States*[30] as an example of a detailed tip that meets the basis of knowledge prong:

> "While Hereford, the Government's informer in that case, did not state the way in which he had obtained his information, he reported that Draper had gone to Chicago the day before by train and that he would return to Denver by train with three ounces of heroin on one of two specified mornings. Moreover, Hereford went on to describe, with minute particularity, the clothes that Draper would be wearing upon his arrival at the Denver station. *A magistrate, when confronted with such detail, could reasonably infer that the informant had gained his information in a reliable way.*"[31] (emphasis added)

Thus, it is not necessary that the words informant "saw," "*was told,*" etc., be in the affidavit. If the tip is otherwise very detailed, a magistrate may reasonably infer that there exists personal knowledge of the events in question.

Besides employing a very detailed tip as a substitute for stating that the informant "saw," "was told," etc., another exception has been recognized, although there is not much authority on the point. In *United States* v. *Sellers,*[32] a Federal appellate court was confronted with an affidavit which stated that an informant had given "reliable information in more than one hundred instances in matters of investigation." In this instance, however, the affidavit did not recite how he obtained his information. The court found that this was not indispensible to a probable cause finding:

> "(C)ommon sense impells (sic) the conclusion that when a confidential informer is shown to be unusually reliable, the magistrate may place added credibility in such information in the affidavit as reveals the precise source of the informer's knowlege.

**"'. . . an affidavit need not set forth facts of a named person's prior history as a reliable informant when the informant is a citizen/neighbor eyewitness with no apparent ulterior motive for providing false information.'"**

> The affidavit before us here recites that the informant had furnished reliable information on more than one hundred occasions. In cases where the affidavit presents such cogent assertions of reliability the quantum of underlying circumstances which reveal the source of the informer's knowledge necessary to sustain the affidavit is clearly less than in cases where the indicia of former reliability is less dramatic. In sum, either of the two objective standards from which the magistrate is to judge the worth of the hearsay may support, although it may not displace, the other."[33]

## The Second Prong: "Veracity"

The second part of the *Aguilar* test, which has sometimes been termed the "veracity" prong,[34] is what distinguishes an officer-affiant's own observations from those of a person not appearing before the magistrate. With respect to the latter, the officer must establish that there is a basis for believing that the information is true.

It should be noted that this second prong is not limited solely to the "criminal informant," *i.e.*, those bartering and bargaining on the information with law enforcement authorities, but to any hearsay information. In this regard, four distinct classes of persons furnishing hearsay evidence have been recognized by the courts, with each being treated a little differently in terms of the veracity requirement.

### The "Trustworthy Source"

The first category might be termed the "trustworthy source." This category consists of law enforcement officers, victims, or witnesses to a crime. A year after *Aguilar*, the Supreme Court decided two cases in which warrants were applied for by law enforcement officers whose probable cause was based in part upon information from other sources. The first case, *United States* v. *Ventresca*,[35] involved a search warrant sought by an officer based upon his own observations and those of fellow officers. No information was set forth in the affidavit to demonstrate the veracity of the other officers. The Court did not find this to be of consequence: "Observations of fellow officers of the Government engaged in a common investigation are plainly a reliable basis for a warrant applied for by one of their number." Therefore, law enforcement officers are presumed to be truthful and no further showing of veracity need be made, beyond the fact that the individual is a law enforcement officer.

The second case, *Jaben* v. *United States*,[36] dealt with information from private citizens. A special agent of the Internal Revenue Service (IRS) filed a complaint for an arrest warrant alleging a criminal violation of the IRS Code. Probable cause was based in part upon the agent's interviews with third persons with whom the taxpayer did business and who had knowledge of his financial condition. The defendant challenged the probable cause for the warrant on the basis that the veracity of the sources was not established. The Court answered this contention as follows:

> "[U]nlike narcotics informants, for example, whose credibility may often be suspect, the sources in this tax evasion case are much less likely to produce false or untrustworthy information. Thus, whereas some supporting information concerning the credibility of informants in narcotics cases or other common garden varieties of crime may be required, such information is not so necessary in the context of the case before us."[37]

Although the Supreme Court did not say that evidence of veracity is never necessary when the person furnishing the information is not the typical "criminal informant," the lower courts considering this problem have consistently found a victim-witness's information to meet the veracity test at least where the victim or witness is identified.[38] Since a victim or witness to the commission of a crime must be identified if the matter proceeds to trial,[39] identifying the victim-witness in the affidavit is not a grave imposition. While different bases for recognizing this have been stated, *United States* v. *Gagnon*[40] reflects the general view of the courts:

> "We have long subscribed to the rule that an affidavit need not set forth facts of a named person's prior history as a reliable informant when the informant is a citizen/neighbor eyewitness with no apparent ulterior motive for providing false information."[41]

Further support for crediting the report of a victim or witness is found in the famous car search case of *Chambers* v. *Maroney.*[42] *Chambers* involved the armed robbery of a gasoline service station. The probable cause for arresting the defendants and for searching the car in which they were found was based upon a description of the robbers and their car from the victim and two teen-aged eyewitnesses. The Court, without addressing the veracity question, merely stated as follows: "Having talked to the two teen-age observers and to the victim . . ., the police had ample cause to stop a blue compact station wagon carrying four men and to arrest the occupants. . . ." It could be argued, of course, that seeing the car and the persons fitting the tip corroborated the hearsay report, thus making it a different case than where the tip is alone the basis for probable cause.

### The "Criminal Informant"

The second class of hearsay is that from the so-called "criminal informant." A precise definition is difficult. The following definition, though, seems to hit the mark:

> "He is likely to be a person in the underworld or a person on its periphery; in its confidence, or so much 'a part of the scenery' . . . that this person is in a particularly good position to know the story of a crime committed, the story of criminal business done, being transacted or proposed for the future. . . ."[43]

There is a motive in furnishing the information, whether it be money, favorable treatment on pending or future criminal charges, repayment for past favorable treatment, revenge, or other considerations. Criminal informants therefore are an inherently suspect class, and evidence of veracity must be contained in the affidavit. The usual way in which to establish an informant's veracity is on the basis of his or her past performance, *i.e.,* a prior "track record" for furnishing information which was confirmed as being true.

Illustrative of this is the case of *McCray* v. *Illinois.*[44] At a hearing on the issue of probable cause to arrest, an officer testified that an informant over the course of a year supplied him with information regarding narcotics activity on some 15 or 16 occasions which proved to be correct and which resulted in numerous arrests and convictions. On cross-examination, he even named the persons who were convicted as a result of the information. The Court had no trouble in concluding that the officer met the burden of establishing "why (he) thought the information was credible."

The *McCray* case, however, raises several questions with respect to demonstrating an informant's veracity. Is it a sufficient showing of veracity if:

1) The affidavit merely states that prior information from the informant has been "correct" or "accurate" without adding that it resulted in arrests and convictions?
2) The information has not led to convictions but to the recovery of property, evidence, or fugitives?
3) The specific names of the parties having been arrested and convicted through the informant's information are not disclosed?
4) The information has resulted only in arrests and not convictions?
5) There is only one past instance of reliability to the informant's credit?
6) The previous instances of reliability were with respect to violations different from those which the informant is now reporting on?
7) Instances of an informant's previous unreliability are not set forth?

The Supreme Court has never specifically addressed the above questions. However, they have been considered by lower Federal and State courts.

### "Informant Has Been Reliable In Past" Language

The courts are split on whether statements such as the informant has been "reliable in the past,"[45] or that prior information has proved to be "correct,"[46] "reliable,"[47] or "true,"[48] are sufficient.[49] These statements are not unlike "reliable information from a credible person" and "reliable informant," which were found insufficient in *Aguilar* and *Spinelli.* Therefore, it is the better practice to set forth the nature and results of the informant's past performance. Otherwise the officer runs the risk that his affidavit will be judged conclusory.

**". . . another method of establishing the veracity of the informant has been recognized, namely, where his information amounts to a statement against his penal interest."**

### Nature of the Informant's Past Performance

Is information leading to arrests and convictions the only type of past performance to be considered in assessing the veracity of a source, or may information resulting in the recovery of evidence or property, or the location of fugitives, be considered? The courts have had no trouble in upholding past performances relating to recoveries and fugitives.[50] Indeed, such information is generally deemed more worthwhile in assessing veracity than the assertion that prior information has resulted in convictions.[51] In setting forth "recovery" or "located" information, the nature of the informant's past performance is more explicitly brought to light. In fact, it may be argued that the "convictions" language is conclusory. A conviction is the end product; it does not disclose what the informant did to bring this about. To relate fully an informant's participation in a case, however, may be very difficult without the description being overly long, unclear, and involved. It also may tend to reveal more about the informant's identity than the officer desires. These two considerations perhaps explain the universal acceptance of the "convictions" language.[52] Moreover, unlike the officer in *McCray*, who detailed the names of the parties arrested and convicted, the courts have not insisted upon such detail, undoubtedly due to a concern about revealing the identity of informants.[53] Nevertheless, it would be worthwhile to state in the affidavit[54] that the lack of specific details is due to this consideration. Where the particulars can be set forth readily and easily, this should be done.

*Chart 2*

**Language to "Qualify" an Informant**

Informant has on [number] previous occasions since [date], the last previous occasion being [date], provided information [SEE BELOW FOR SPECIFIC LANGUAGE]. Further details as to the specific cases involved would tend to disclose the informant's identity. The identity of this informant should be kept confidential because disclosure of informant's identity would impair his future usefulness to law enforcement and endanger his life.

**Specific Language to Be Inserted Above**

1. CONVICTIONS
   "which has resulted in [number] convictions."
2. EVIDENCE OF CRIMINAL ACTIVITY OR LOCATION OF FUGITIVE
   "which has resulted in the recovery of [or location and arrest of] [describe property and/or dollar value, or name of fugitive, where applicable, or where such would identify informant, use generic term, such as fruits, instrumentalities, contraband, evidence of a crime or fugitive]."
3. SIMPLY ACCURATE INFORMATION
   "concerning the criminal activities of others which information was not available to the public, and which was confirmed as being true and accurate by independent investigation by this Department, and was considered as material in the investigation to which the information pertained."
4. ARRESTS
   "which has resulted in [number] arrests. Probable cause in each instance was found by a magistrate or grand jury."

**Where Applicable, The Following Addition Is Useful**

"Informant has never provided information which proved to be incorrect."

In instances where information has not resulted in recoveries or convictions and the specific details of the information cannot be set forth for one reason or another, it would seem the better course to at least state that the information related to the criminal activities of others and that it was of significant value.[55] Language for this purpose is contained in chart 2, item 3. However, caution must be exercised in employing statements of this nature since they are an easy target of a challenge as being conclusory.

### Arrests vs. Convictions

Is it sufficient that the informant's prior performance has simply led to arrests or must there also be convictions? To begin with, the term "arrests" is ambiguous. If it means that the informant's report led to the location of a fugitive for whom probable cause already existed, it would be better to detail this information because the specific nature of the past performance is thereby described. If it means only that a person was arrested based in part on the informant's information, this report means little.[56] If the fact of an "arrest" or "arrests" standing alone is sufficient, then an officer would only have to make an arrest based on a first-time informant's unverified information, and the informant's veracity would be established for future cases. Thus, while a number of appellate decisions specify that the "arrests" language is sufficient,[57] it is subject to question. If convictions for one reason or another have not resulted from the arrests, language to indicate that the arrests have been upheld on probable cause grounds (as where corroboration of the informant's tip was done) should be added to the "arrests" statement (see chart 2, item 4).[58]

### Number of Prior Instances of Reliability

There is no reported decision holding that there must be a specific number of prior instances of reliability before the informant's veracity is established.[59] Moreover, no case has been located which requires that the previous reliability of the informant relate to the same type of criminal violation on which the informant is currently reporting.[60] Such a requirement would result in an informant who has given reliable information concerning narcotics matters not being considered credible concerning personal crime matters. While it might be worthwhile to add to an affidavit that the informant has supplied reliable information in the same type of violation in the past, thus bolstering the informant's veracity, it is not indispensible in establishing veracity.

### Setting Forth Informant's Entire Track Record

However, not unreasonable is the notion that an informant's entire track record should be described, his successes as well as his failures, in order that the magistrate may properly assess the informant's reliability.[61] While this does not appear to have been a requirement in any jurisdiction in the past, a recent California Supreme Court case, *People* v. *Kurland*,[62] requires this. Since there is logic to this argument and because it is reasonable to believe defense attorneys, armed with the *Kurland* decision, will henceforth take this position in other jurisdictions, it would be worthwhile for the officer-affiant to add to his affidavit that the informant has never provided information which proved to be incorrect, where such is the case.

### Veracity—Another Approach

Typically, previous reliability is the only way available to establish the veracity of the informant. As Judge Moylan of the Maryland Court of Special Appeals has pointed out:

> "The character of the informant as a truthspeaker could hypothetically be established in a number of ways. A lie detector test or truth serum would certainly have a bearing on the question. If the informant was once awarded a Boy Scout medal for trustworthiness or if he happened to be a prince of the church, those facts would be unquestionably relevant on the issue. Testimonials from friends, neighbors, and business associates as to his reputation for 'truth and veracity' would be highly relevant. As a practical matter, however, 'stool pigeons' are neither Boy Scouts, princes of the church, nor recipients of testimonials. With the typical confidential police informant, we have recourse only to his 'track record' of past performances."[63]

However, another method of establishing the veracity of the informant has been recognized, namely, where his information amounts to a statement against his penal interest. This was established by the 1971 Supreme Court case of *United States* v. *Harris*.[64] A search warrant was issued based upon a first-time informant's report that he purchased illicit whiskey at the defendant's premises "for a period of more than two years, and most recently within the past two weeks." Some information concerning the defendant's criminal background was also included. A prosecution against the defendant-seller resulted after the whiskey was recovered from his premises. The defendant contended that the warrant did not establish probable cause because the informant, never having supplied reliable information before, could not have met the veracity test of *Aguilar*. However, purchasing illicit whiskey was also a crime, and as the Chief Justice explained, this was a sufficient basis for crediting the purchaser-informant's tip:

> "Common sense in the important daily affairs of life would induce a prudent and disinterested observer to credit these statements. People do not lightly admit a crime and place critical evidence in the hands of the police in the form of their own admissions. Admissions of crime, like admissions against proprietary interests, carry their own indicia of credibility—sufficient at least to support a finding of probable cause to search. That the informant may be paid or promised a 'break' does not eliminate the residual risk and opprobrium of having admitted criminal conduct. Concededly admissions of crime do not always lend credibility to contemporaneous or later accusations of another. But here the informant's admission that over a long period and currently he had been buying illicit liquor on certain premises, itself and without more, implicated that property and furnished probable cause to search."[65]

The Court, finding the informant's accusation to be a declaration against interest, held that it provided a constitutionally sufficient basis upon which a finding of probable cause could be made when coupled with the officer's knowledge of the defendant's background.

**". . . there is an unwritten rule of probable cause that 'where there is opportunity for inquiry and investigation, inquiry and investigation should be made.'"**

Four of the Justices expressed the view that the informant's statement in itself established probable cause without any information from the affiant regarding defendant's background. It appears that 7 of the 12 Federal appellate courts have likewise adopted the view that a statement against interest in itself satisfies the veracity prong of *Aguilar*.[66] This method of satisfying the veracity requirement is particularly helpful in situations in which an accused identifies his accomplices. Where it is obvious that he is the source of the information, naming him will carry no further opprobrium and will add to the credibility of his report.

### Naming the Criminal Informant

In the typical case, a criminal informant's identity is not revealed. If, rather than keeping the informant's identity anonymous, he is named in the affidavit, will this in itself be a sufficient basis for crediting his information? The cases addressing this issue have concluded that simply naming the criminal informant is not enough to establish his veracity.[67] However, to quote one court, "it is one factor which may be weighed in determining the sufficiency of an affidavit."[68]

### "Good-Citizen" Informant

Besides the trustworthy source and the criminal informant, a third type of source has been recognized, namely, the unidentified "good-citizen" informant. The good-citizen informant is similar to the victim-witness to a crime in that he does not have an ulterior motive in furnishing the information but, unlike the victim-witness, usually has not seen a crime take place. The informant's identity, therefore, need not be disclosed to the defense.[69] This person has usually seen evidence of the crime at some place or has learned of the commission of the crime from the suspect and wishes to report this information to law enforcement authorities. He is willing to disclose his identity to the authorities, but otherwise wishes to remain anonymous. Illustrative is the case of *United States* v. *Unger*,[70] decided by the U.S. Court of Appeals for the Seventh Circuit. An individual, while working at his occupation in the basement of an apartment building, observed a cache of weapons through an opening in an enclosed locker. He furnished this information to the police, who applied for a search warrant and ultimately seized the weapons. The search warrant did not name the citizen but set out his observations and how he happened to come upon the information, namely, through working at his occupation. The defendant contended that the veracity of the source was not established, and therefore, the affidavit did not satisfy the probable cause requirement. The court noted that it was apparent from the affidavit that the individual furnishing the information was not a typical criminal informant who was part of the criminal element since he gathered his information while pursuing his employment. The court concluded that the affidavit was sufficient since the informant's veracity could "be deduced from the content of the complaint."

In order to avoid contentions that an individual furnishing information is a criminal informant, thus requiring a greater showing of veracity, it would be advantageous for an officer to disclose in as much detail as possible: (1) How the "citizen-informant" acquired the information reported (as was done in *Unger*); (2) a statement that the information was not received for monetary payment or for past or future favorable treatment on criminal charges; and (3) background information concerning the citizen, namely, the lack of a criminal record, the holding of a responsible job, the owning of a home, the fact that he is supporting a family, etc.[71]

### The Anonymous Source

The last category of informants is the anonymous source. This source is not only unidentified in the affidavit but is also unknown to the law enforcement authorities. The only way to establish the veracity of his information is through corroboration. The corroboration must be extensive, almost to the point of constituting probable cause in itself.[72] Corroboration, moreover, is the elixir for curing all hearsay information which fails to meet the *Aguilar* two-pronged test. Even where the informant's report itself satisfies *Aguilar*, there is an unwritten rule of probable cause that "where there is opportunity for inquiry and investigation, inquiry and investigation should be made."[73] Therefore, unless time is of the essence, investigation should always be undertaken in an effort to corroborate an informant's tip. The subject of corroboration will be developed in the conclusion of this article. **FBI**

*(Continued next month)*

### Footnotes

[1] U.S. Const. amend. IV reads as follows: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

[2] *Brinegar* v. *United States*, 338 U.S. 160 (1949).

[3] 1 W. LaFave, Search and Seizure § 3.3, at 500.

[4] 378 U.S. 108 (1964).

[5] 290 U.S. 41 (1933).

[6] 357 U.S. 480 (1958).

[7] 358 U.S. 307 (1959).

[8] 362 U.S. 257 (1960).

[9] *Supra* note 5.

[10] *Supra* note 6.

[11] *Supra* note 7.

[12] *Supra* note 8.

[13] *Supra* note 4.

[14] *Id.* at 109.

[15] *Id.* at 114.

[16] *Spinelli* v. *United States*, 393 U.S. 410, 413 (1969).

[17] *Id.* at 417, n. 5.

[18] This term "basis of knowledge" was apparently coined by Judge Charles E. Moylan, *Jr.*, of the Maryland Court of Special Appeals in a thoughtful article on this subject. *See* Moylan, *Hearsay and Probable Cause: An Aguilar and Spinelli Primer*, 25 Mercer L. Rev. 741, 765 (1974).

[19] *Supra* note 16, at 416.

[20] *See, e.g., United States* v. *Dauphinee*, 538 F.2d 1, 5 (1st Cir. 1976). On the subject of staleness *see generally* Mascolo, *The Staleness of Probable Cause in Affidavits for Search Warrants: Resolving the Issue of Timeliness*, 43 Conn. B.J. 189 (1969); Comment, *A Fresh Look at State Probable Cause: Examining the Timeliness Requirement of the Fourth Amendment*, 59 Iowa L. Rev. 1308 (1974); Annot., 100 A. L. R. 2d 525 (1950).

[21] *United States* v. *Harris*, 403 U.S. 573 (1971); *Rugendorf* v. *United States*, 376 U.S. 528 (1964).

[22] *See, e.g., State* v. *Kasold*, 110 Ariz. 563, 521 P.2d 995 (1974).

[23] *Compare United States* v. *House*, 604 F.2d 1135, 1142 (8th Cir. 1979), *cert. denied*, 445 U.S. 931 (1980), *with People* v. *Jackson*, 21 Ill. App. 3d 326, 315 N.E.2d 204 (1974).

[24] *United States* v. *Carter*, 498 F.2d 83 (D.C. Cir. 1974) (per curiam).

[25] *State* v. *Chapman*, 24 N.C. App. 462, 211 S.E.2d 489 (1975).

[26] *State* v. *Hayward*, 18 Or. App. 128, 523 P.2d 1278 (1974).

[27] *See, e.g., United States* v. *Long*, 439 F.2d 628 (D.C. Cir. 1971).

[28] *Supra* note 16.

[29] *Supra* note 16, at 416.

[30] *Supra* note 7.

[31] *Supra* note 16, at 416–17.

[32] 483 F.2d. 37 (5th Cir. 1973), *cert. denied*, 417 U.S. 908 (1974).

[33] *Id.* at 41.

[34] The term "veracity" was also apparently coined by Judge Moylan. *Supra* note 18, at 755.

[35] 380 U.S. 102 (1965).

[36] 381 U.S. 214 (1965).

[37] *Id.* at 224.

[38] *United States* v. *Burke*, 517 F.2d 377, 380–81 (2d Cir. 1975); *United States* v. *Bell*, 457 F.2d 1231, 1238 (5th Cir. 1972); *United States* v. *Swihart*, 554 F.2d 264, 269 (6th Cir. 1977); *McCreary* v. *Sigler*, 406 F.2d 1264, 1269 (8th Cir.), *cert. denied*, 395 U.S. 984 (1969); *United States* v. *Easter*, 552 F.2d 230 (8th Cir.), *cert. denied*, 434 U.S. 844 (1977); *United States* v. *Fooderbush*, 625 F.2d 246, 252 (9th Cir. 1980); *United States* v. *Mahler*, 442 F.2d 1172, 1174–75 (9th Cir.), *cert. denied*, 404 U.S. 993 (1971); *United States* v. *Gagnon*, 635 F.2d 766 (10th Cir. 1980), *cert. denied*, 101 S.Ct. 3008; *United States* v. *McCoy*, 478 F.2d 176, 179 (10th Cir.), *cert. denied*, 414 U.S. 828 (1973).

[39] *Roviaro* v. *United States*, 353 U.S. 53 (1957).

[40] 635 F.2d 766 (10th Cir. 1980), *cert. denied*, 101 S.Ct. 3008.

[41] *Id.* at 768.

[42] 399 U.S. 42 (1970).

[43] M. Harney & J. Cross, The Informer in Law Enforcement 40 (2d ed. 1968).

[44] 386 U.S. 300 (1967).

[45] *Compare Jones* v. *Crause*, 447 F.2d 1395 (10th Cir. 1971), *cert. denied*, 405 U.S. 1018 (1972), *with Akins* v. *State*, 572 S.W.2d 140 (Ark. 1978).

[46] *Compare United States* v. *Gunn*, 454 F.2d 29 (5th Cir.), *cert. denied*, 407 U.S. 911 (1972), *with Galgano* v. *State*, 147 Ga. App. 284, 248 S.E. 2d 548 (1978).

[47] *Compare Tittle* v. *State*, 539 P.2d 422 (Okla. Crim. App. 1975), *with State* v. *Graddy*, 55 Ohio St.2d 132, 378 N.E.2d 723 (1978).

[48] *Compare State* v. *Caldwell*, 25 N.C. App. 269, 212 S.E.2d 669 (1975), *with People* v. *Parker*, 42 Ill.2d 42, 245 N.E.2d 487 (1969).

[49] This split in the lower courts is no doubt due in part to the fact that in three pre-*Aguilar* cases, the previous reliability of the informants was shown in somewhat conclusory terms, without criticism by the Court. However, all these cases involved additional corroboration by the affiant. *Jones* v. *United States*, *supra* note 8 ("information . . . on previous occasion . . . was correct"); *Draper* v. *United States*, *supra* note 7 (previous information was "accurate and reliable"); *Rugendorf* v. *United States*, *supra* note 21 ("informant . . . has furnished reliable information . . . in the past").

[50] *See, e.g., United States* v. *Anderson*, 500 F.2d 1311 (5th Cir. 1974); *United States* v. *Hood*, 422 F.2d 737 (7th Cir.), *cert. denied*, 400 U.S. 820 (1970).

[51] *Supra* note 3, at 511.

[52] *Id.* at 509.

[53] *See State* v. *Joseph*, 114 R.I. 596, 337 A.2d 523 (1975).

[54] *People* v. *Kurland*, 168 Cal. Rptr. 667, 618 P.2d 213, 225 n. 12 (1980), *cert. denied*, 451 U.S. 987 (1981).

[55] *See People* v. *Montoya*, 539 P.2d 1332 (Colo. 1975) (en banc).

[56] *See supra* note 18, at 759.

[57] *State* v. *Karr*, 44 Ohio St.2d 163, 339 N.E.2d 641 (1975), *cert. denied*, 426 U.S. 936 (1976); *State* v. *White*, 10 Wash. App. 273, 518 P.2d 245 (1974).

[58] *See People* v. *Dumas*, 9 Cal.3d 871, 109 Cal. Rptr. 304, 512 P.2d 1208, 1211–12 (1973).

[59] *See generally supra* note 3, at 509.

[60] *See, e.g., United States* v. *House*, *supra* note 23; *United States* v. *Shipstead*, 433 F.2d 368 (9th Cir. 1970).

[61] *Supra* note 18, at 759.

[62] *Supra* note 54.

[63] *Supra* note 18, at 758.

[64] 403 U.S. 573 (1971).

[65] *Id.* at 583–84.

[66] *United States* v. *Principe*, 449 F.2d 1135, 1137 (1st Cir. 1974); *Armour* v. *Salisbury*, 492 F.2d 1032, 1035–36 (6th Cir. 1974); *United States* v. *Rosenberger*, 536 F.2d 715, 719 (6th Cir. 1976), *cert. denied*, 431 U.S. 965 (1977); *United States* v. *Spach*, 518 F.2d 866, 870 (7th Cir. 1975); *United States* v. *Carmichael*, 489 F.2d 983, 986 (7th Cir. 1973) (en banc); *United States* v. *Golay*, 502 F.2d 182 (8th Cir. 1974); *United States* v. *Jabara*, 618 F.2d 1319, 1323 (9th Cir.), *cert. denied*, 449 U.S. 856 (1980); *United States* v. *Hampton*, 633 F.2d 927, 929 (10th Cir. 1980), *cert. denied*, 449 U.S. 1128 (1981); *United States* v. *Davis*, 617 F.2d 677, 693 (D.C. Cir. 1979), *cert. denied*, 445 U.S. 967 (1980). The rule in the fifth circuit is unclear; *compare United States* v. *Martin*, 615 F.2d 318, 325 (5th Cir. 1980), *with United States* v. *Gorel*, 622 F.2d 100, 104 (5th Cir. 1979).

[67] *United States* v. *Martin*, 615 F.2d 318, 325 n. 9 (5th Cir. 1980); *United States* v. *Spach*, 518 F.2d 866 (7th Cir. 1975); *McCreary* v. *Sigler*, 406 F.2d 1264, 1268 (8th Cir.), *cert. denied*, 395 U.S. 984 (1969).

[68] *United States* v. *Spach*, 518 F.2d 866, 870 (7th Cir. 1975).

[69] *Supra* note 39.

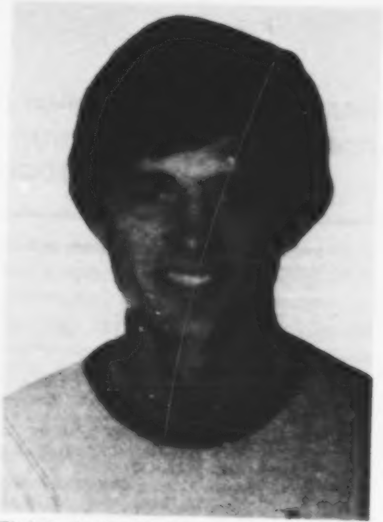
[70] 469 F.2d 1283 (7th Cir. 1972), *cert. denied*, 411 U.S. 920 (1973).

[71] *See Wetherby* v. *State*, 482 S.W.2d 852 (Tex. Crim. App. 1972).

[72] *See generally supra* note 3, § 3.4 at 596–97. An example of an anonymous tip ripening into probable cause is found in *United States* v. *Horton*, 488 F.2d 374 (5th Cir. 1973), *cert. denied*, 416 U.S. 993 (1974).

[73] *Filer* v. *Smith*, 96 Mich. 347, 55 N.W. 999 (Mich. 1893).

# WANTED BY THE FBI



*Photograph taken 1975*

### Michael Ray Pickett

Michael Ray Pickett, also known as Michael Bigett, Richard E. Elks, Michael R. Pickett

### Wanted for:

Interstate transportation of stolen property

### The Crime

Michael Ray Pickett is wanted by the FBI for interstate transportation of stolen property and the sale of stolen goods. Pickett is believed to have transported stolen jewelry to San Francisco after the armed robbery of a Metairie, La., jewelry store. The stolen jewelry was then sold to a San Francisco Police Department "sting" operation. Pickett is also a primary suspect in the armed robbery of a Cove City, N.C., bank.

On August 16, 1979, a Federal warrant for Pickett's arrest was issued in San Francisco, Calif.

### Description

| | |
|---|---|
| Age | 29, born September 28, 1953, Kinston, N.C. (not supported by birth records). |
| Height | 6′1″. |
| Weight | 195 pounds. |
| Build | Medium. |
| Hair | Blond. |
| Eyes | Brown. |
| Complexion | Fair. |
| Race | White. |
| Nationality | American. |
| Occupation | Scuba diving instructor. |
| Remarks | Wears an earring in one ear; enjoys scuba diving and flying; reportedly a vegetarian in the past. |
| Social Security No. Used | 246-88-2170. |
| FBI No. | 262 615 L8. |

### Caution

Pickett should be considered armed and dangerous.

### Notify the FBI

Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone number of which appears on the first page of most local directories.

### Classification Data:

NCIC Classification:
06561314130854120714
Fingerprint Classification:
6 S 1 R IOO 13
S 1 R IOI
I.O. 4898

*Right ring fingerprint*

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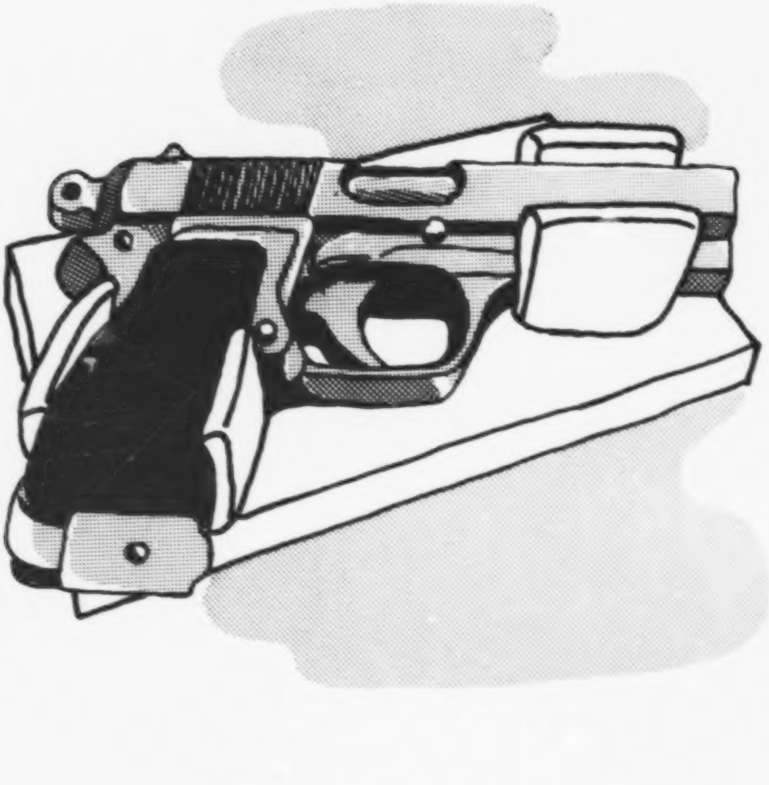

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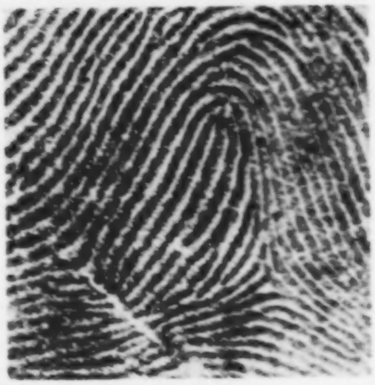
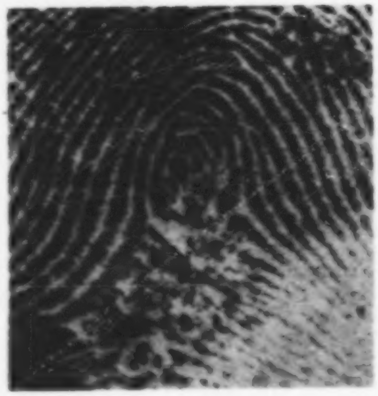
# Interesting Patterns

The illustrations this month depict the effect that a scar can have on a fingerprint pattern. The fingerprint pattern at top shows a 5-count loop with a small scar. The picture at bottom shows the same pattern after it was scarred a second time, causing it to appear as a whorl.





# FBI LAW ENFORCEMENT BULLETIN

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# FBI LAW ENFORCEMENT BULLETIN

DECEMBER 1982, VOLUME 51, NUMBER 12

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POLICE
POLICE

**The Cover**

With the effectiveness of traditional patrol practices being questioned, police departments must now seek innovative ways to patrol. See article on directed patrol systems, p. 1.

**Federal Bureau of Investigation**
**United States Department of Justice**
**Washington, D.C. 20535**

**William H. Webster, Director**

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through February 21, 1983.

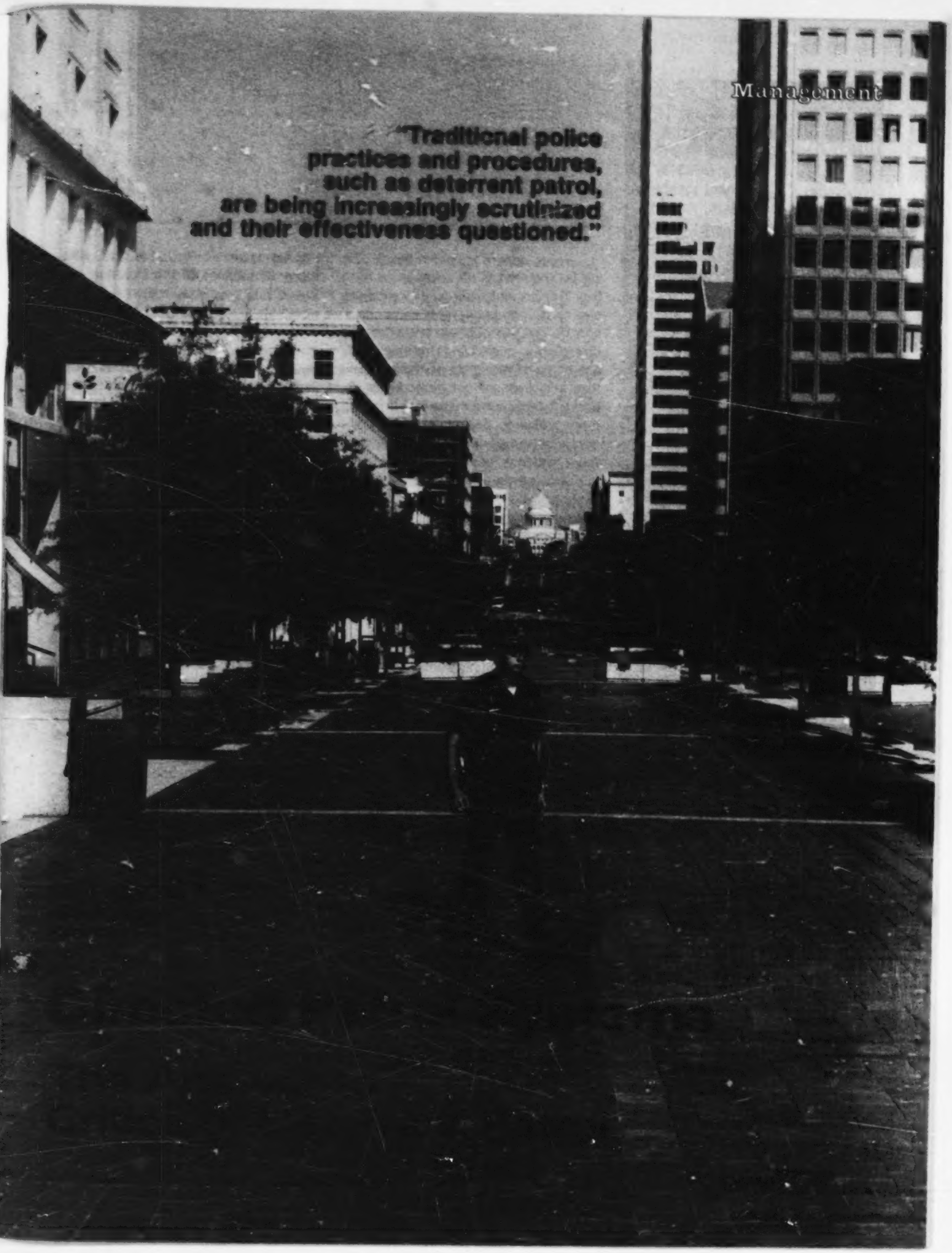
Published by the Office of Congressional and Public Affairs
Roger S. Young, *Assistant Director*

*Editor*—Thomas J. Deakin
*Assistant Editor*—Kathryn E. Sulewski
*Art Director*—Kevin J. Mulholland
*Writer/Editor*—Karen McCarron
*Production Manager*—Jeffrey L. Summers
*Reprints*—Mary Ellen Drotar

ISSN 0014-5688

USPS 383-310

## Management



"Traditional police practices and procedures, such as deterrent patrol, are being increasingly scrutinized and their effectiveness questioned."

*Captain Yates*

*LeRoy Bangham*
*Chief of Police*

Police administrators in the 1980's will be required to deal with increasing fiscal constraints as public pressure results in mandates such as Proposition 13. Traditional police practices and procedures, such as deterrent patrol, are being increasingly scrutinized and their effectiveness questioned. It is imperative that police managers consider more efficient deployment of police personnel—they must learn to "do more with less" in the years ahead.

This article will examine one area of concern—improving the effectiveness and productivity of preventive patrol operations. The directed patrol system is a step toward more efficient deployment of police resources.

## Traditional Preventive Patrol

A principal assumption underlying preventive patrol has been that the deployment of highly visible and mobile patrol units could prevent and deter criminal activity. When officers have not been responding to calls for service, they have been engaged in preventive patrol—quasi-random movement through their beats. Although the activity might account for 30 to 40 percent of an officer's time, it is frequently fragmented into small segments of time separated by service calls and the performance of administrative duties.[1] One study concludes that on the average, about 5 hours of an officer's 8-hour shift are allocated at the officer's discretion, while 3 hours are spent on assigned tasks.[2] In other words, the problem with deterrent patrol, in the traditional sense, is that it has given too much latitude to the individual police officer on patrol, with not enough attention being paid to managing the officer's time.[3]

Most departments have not developed systematic patrol goals and objectives that can be used by patrol managers and firstline supervisors to prioritize the patrol workload and develop an effective patrol operation. Frank G. MacAloon, editor of *Law and Order Magazine*, stated, "Yesterday's concept of patrol, the repetitious driving a beaten path to insure police presence and high visibility is about as practical as storing buffalo chips to neutralize the energy crunch. Trained men with modern equipment in the field will always be a necessity, but to expect little else from them is anti-productive and does guarantee boredom. Directing patrol officers to continually seek out suspicious persons, probable or potential criminal acts and constantly report these findings in an organized fashion for analysis is productive. Training the patrol force to initiate the preliminary investigation of crimes discovered or reported in their patrol district further develops their talents and usefulness."[4]

It is important to note that tradition is primarily responsible for what is transpiring today. This tradition began with the creation of the London Metropolitan Police in 1829 and continues today. As the "modern" police emerged in London, their operations were characterized by certain elements that are still common to law enforcement including:

1) Officers were assigned beats—areas in which to conduct their patrol activities;
2) Officers were clothed in a uniform that made them highly visible;

3) Officers patrolled their assigned areas in a random manner; and
4) The tasks the officers performed while on patrol were determined by their own initiative.[5]

These elements emerged as, and remain, the basic components of "preventive" patrol. Until just recently, they were considered "sacred" to the success of the patrol operation. Since 1829, preventive patrol has not changed in any substantial way. With the exception of substituting the motor vehicle for foot patrol, the radio for the call box, and other technical innovations, police patrol is still being handled in most departments in the United States as it was in London in 1829. The tradition of "preventive" patrol has had over 150 years to establish itself.

There are other traditional considerations which also impact upon the effectiveness of the patrol operation. Most firstline supervisors come from the ranks of the patrol force and have been exposed to only the traditional patrol operation. The same is true for most middle management, command, and administrative personnel. Most training provided to the recruit focuses on the traditional mode of patrol. The patrol officer begins his career by learning that "preventive" patrol is the accepted mode of operation, and this concept is reinforced by his peers, supervisors, and chief. From the beginning of the "modern" police era, the activities of patrol officers were undertaken at the initiative of the officer. To a large extent, the patrol officer decided what he did and when he did it while on patrol. The same is true today. This element of "officer-initiated" task performance is probably one of the most significant reasons why "preventive" patrol is ineffective.[6]

## The Directed Patrol Approach

The methods used during directed patrol are no different than the methods used by officers while performing random preventive patrol. Directed patrol is visible, combines both highly mobile vehicular movement with some foot patrol, emphasizes observation of street activity, and encourages officers to initiate citizen contact, as well as pedestrian and vehicular stops. However, unlike traditional patrol, these methods focus on the specific crime and order maintenance problems that exist in a community.[7]

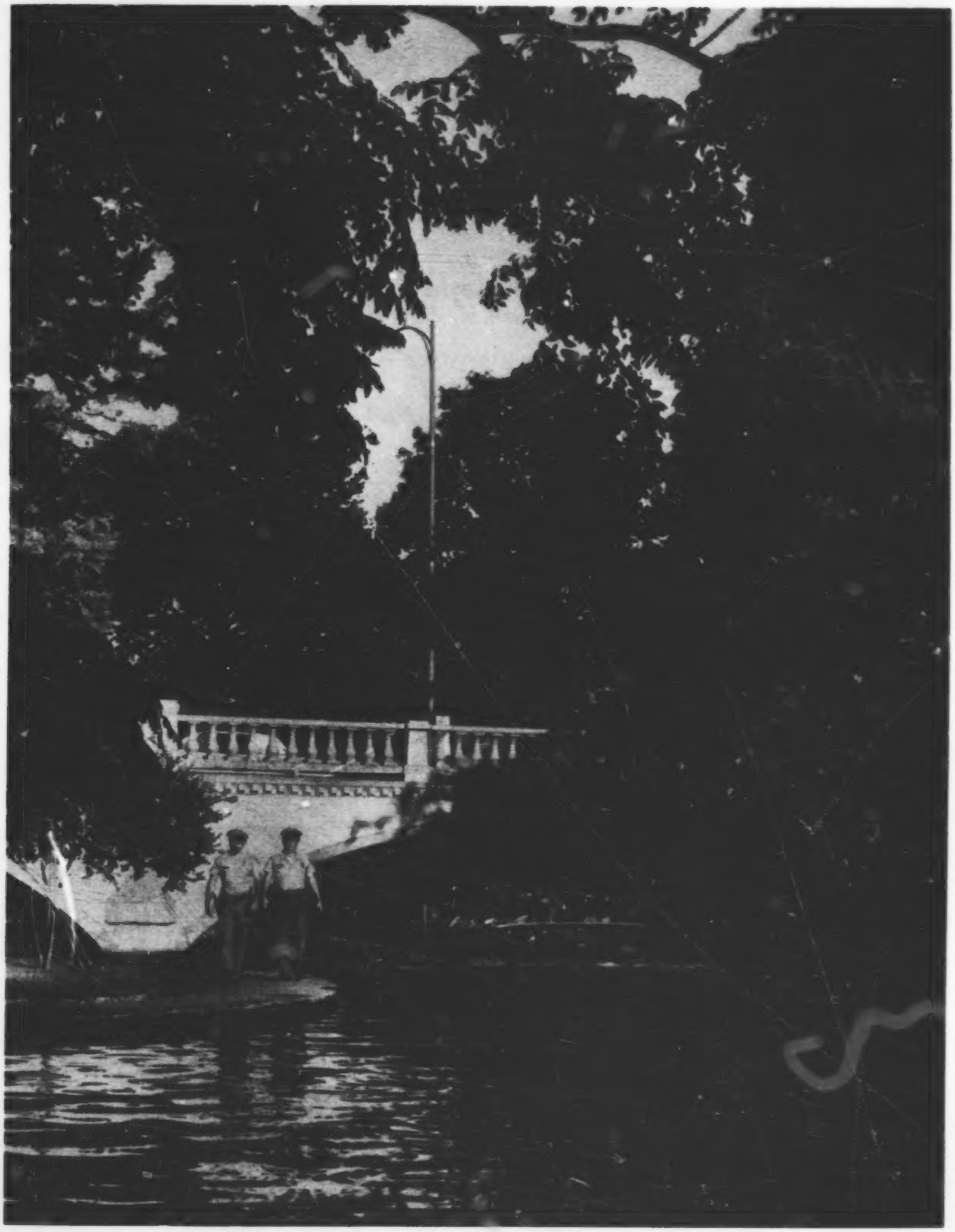
The implementation of a directed patrol program requires a department to rethink its policy of permitting calls for service to be the major determining factor in police operations, and it demands that patrol supervisors assume a major role in analyzing beat problems and planning patrol activities.

There are several advantages to the department, its personnel, and the community when a directed patrol system is used. Directed patrol makes maximum use of available resources. The primary resource within any police agency is its personnel, and any increase in their productivity would have to be viewed as an improvement in resource use. Another significant advantage is that it can increase personnel job satisfaction and morale. By placing the patrol officer in a position to make criminal apprehensions, and therefore, have a direct impact on crime, he will realize more the initial job expectation—that of "catching criminals."

When using directed patrol, the department is more likely to attain the goal of reducing crime. Adopting a proactive approach to patrol can result in a reduction of crime in the community—it is an attainable goal.[8]

**"The methods used during directed patrol are no different than the methods used by officers while performing random preventive patrol."**

HIGHWAY PATROL



**"Directed patrol makes maximum use of available resources."**

### Crime Analysis—A Key Element

Police administrators must look to their records system for information identifying crime patterns and other community problems. It is necessary to attack specific crimes in limited geographic areas with tactics that are tailored to fit the particular crime problem. In order to develop a set of workable objectives, crime data from the community must be analyzed to identify the particular crimes to be targeted and select individual neighborhoods where the programs should be implemented. After the nonpreventable crimes are eliminated from consideration, and before a detailed analysis of the target crimes is conducted, a geographic analysis should be conducted using a pin map to identify the specific neighborhoods with the greatest problems. Once the high-incidence areas have been established, the target neighborhoods should be selected so that a thorough analysis of the targeted crime in that area can be conducted. Basically, there are four factors that must be identified:

1) Who is being victimized;
2) Who are the perpetrators;
3) How the offender is committing the crime; and
4) When the crimes are occurring.[9]

Once these questions have been answered, it is possible to develop countermeasures that can effectively deal with the targeted crime.

### Input From Staff, Field Officers, and the Community

Thorough planning is an essential element in the development and implementation of an effective directed patrol operation. Crime analysis is an essential element, as is input and support from staff and field officers. Officers in the field can provide important information on crime and community problems.

Virtually all directed patrol operations make use of some form of crime analysis; however, approaches to analysis and the quality of results vary widely.[10] Crime analysis may involve the informal analysis of patrol officers, the informal judgment of command and supervisory personnel, simple tabulations of crime occurrences, carefully developed, elaborate manual analysis procedures, and highly sophisticated, computerized analysis routines. In addition, community perceptions of particular crime problems should be considered.

Often, problems of the community go unnoticed because police believe that they can best decide priorities. Although final decisions on police strategy must rest with the law enforcement agency, the community is in a good position to advise the police of crime and other problems. Citizens, viewing problems from a different perspective, can provide a law enforcement agency with a differing view. With community input and proper analysis, a department can direct resources into areas of greatest need for substantial impact on crime patterns and other community problems.[11]

### Implementation and Evaluation

Planning is an essential element in the implementation of a directed patrol program. Police administrators and planners must consider the new demands being placed upon their patrol personnel and develop training and advisory supports to insure complete program implementation. Members of the department must adapt themselves to the various elements of a directed patrol program. These elements include:

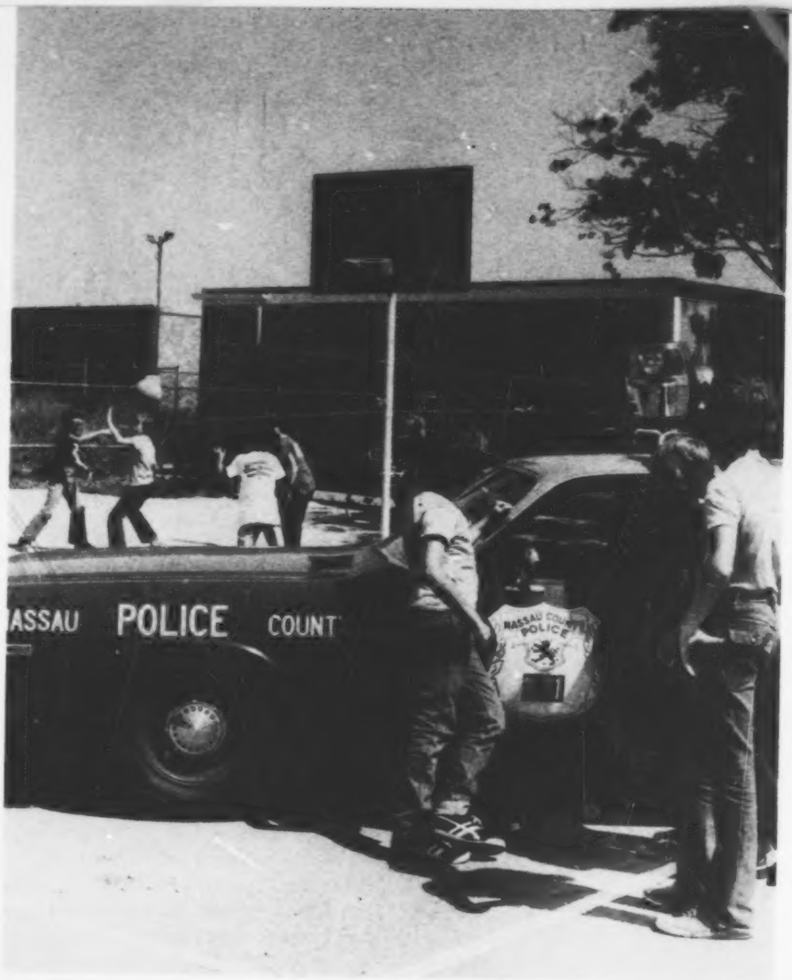
1) Acceptance by firstline supervisors of new analysis and management responsibilities. Supervisors must analyze area crime and traffic problems and develop geographic and time-specific, directed patrol activities. An increased responsibility must also be borne by supervisors for assessing the impact of directed activities and evaluating officers on how well they adapt to directed patrol assignments;
2) Acceptance by patrol officers of directed patrol activities and new schedules and shift assignments that match actual workload demands, the loss of free or random patrol time, and the acceptance of new performance evaluation standards that complement the directed patrol program are primary considerations;
3) Acceptance by communications/dispatch personnel of increased control by the patrol division over dispatch policy, workload prioritization schemes, and the development of alternative call response patterns;
4) Acceptance by investigative personnel of aggressive efforts by patrol officers to complete more detailed preliminary investigations, engage in area

witness canvasses, and perform some nonuniformed patrol activities; and

5) Acceptance by traffic, crime prevention, and community relations personnel of the more aggressive role patrol officers will play in performing these activities as part of their directed patrol assignments.[12]

There are certain critical steps police administrators should take to insure a smooth and orderly development of a directed patrol program. These steps include:

1) "Participatory Planning—It is helpful to let patrol personnel who will be affected by the change participate in the process of planning and development. This provides them with a sense of involvement and commitment to the project's success. It gives the officers an opportunity to voice their concerns and reservations from the outset, and it allows the planning process to benefit from the ideas and advice of experienced patrol officers and supervisors.
2) Officer Training—It is important that all officers be retrained to carry out the directed patrol program. Training should be designed to relieve uncertainties about the project and to provide all personnel with reasons for particular changes and how the changes will affect their jobs.
3) Supervisor Training—Special technical and motivational training should be given to first-line supervisors. Their cooperation can be a critical factor in successful project implementation. This training must emphasize the new management and planning responsibilities to be borne by the first-line supervisor.
4) Program Responsibility—Individual responsibility for the entire project and its various components should be clearly established from the beginning. This will enhance individual accountability for the performance of particular tasks. Positive incentives can be offered by giving special recognition to officers who perform with particular distinction.
5) Performance Monitoring—A system for monitoring project performance should be established and be fully operational prior to implementation. Careful project monitoring provides a means of quickly identifying existent and emerging problems. A department should be willing and able to make necessary adjustments as problems develop.
6) Outside Assistance—Contacting departments which have developed similar projects can be helpful in anticipating and overcoming implementation problems. Their experience can be an invaluable source of guidance and direction.
7) Internal 'Political' Considerations—It should be recognized that the process of developing and implementing changes and innovations in patrol can be, and often is, highly political. In an ideal world, all the



**"Implementation of directed patrol systems is one relatively inexpensive way to increase police effectiveness."**

members of a department would willingly cooperate in efforts to improve patrol productivity, with conflict arising only when there are honest differences of opinion. In reality, however, projects are often viewed as benefiting some groups or individuals more than others, and the relative sense of gain or loss can have significant consequences for implementation. In implementing a new project, it is important to consider how it will be affected by the internal political realities of a department as well as opinions of individual officers.

8) Public Education—Some changes in patrol practice, such as prioritization of calls for service and deferred response practices, may require reeducation of the public prior to implementation.
9) Performance Evaluation—Departments should develop an officer performance evaluation system that takes into account the major elements of the directed patrol program. Since directed patrol requires officers to match their activities to community problems and frequently to implement new tactics, the rewards system of the department should be changed to reinforce the new program. This is particularly true for sergeants and watch commanders who will be required to design deployment strategies and tactics based upon workload and crime information. Instead of rating officers only on how well they handle street incidents, patrol administrators will need to carefully monitor their analysis, planning, and management contribution."[13]

Program evaluation is a critically important aspect of a directed patrol program. It provides the only systematic means of determining whether directed patrols are successful. There are two basic types of measures that are commonly used in program evaluations—outcome measures and process measures.[14] Outcome measures are used to assess the success of a specialized operation in combating crime; process measures are used to examine the way in which the results of specialized operations were achieved. They assist in assessing how a program worked, but they are not indicators of overall effectiveness.

## Conclusion

Police resources should be used in more effective and productive ways. Patrol is seen as a preventive function by the majority of police administrators; however, the patrol function is now being assessed. In a study of patrol experiments, it was observed that the old and new types of patrol are still a subject of only limited interest among police and criminal justice professionals—that "this becomes particularly apparent when one attempts to find reference material analyzing the impact of pilot projects."[15] In this regard, it was noted that articles pertaining to the use of directed patrol systems were practically nonexistent in criminal justice journals. Information was more easily located in government publications and textbooks. It would seem, then, that there is more interest in directed patrol among academicians than practitioners of criminal justice administration.

Given the economic and political pressures of the 1980's, fiscal constraints in the public sector will bring increasing pressure to bear on police administrators for improving productivity rather than simply adding personnel as a response to rising crime statistics. Given the cost of putting a police officer on the street, it is simply not feasible to continue adding personnel as we have for the past 150 years. The answer will be found in more efficient deployment of existing, or in some cases, reduced resources.

Implementation of directed patrol systems is one relatively inexpensive way to increase police effectiveness. While such a system can be effective in a large city, it is particularly appropriate for use in the small or medium-sized police department. Not only are directed patrol systems relatively inexpensive, but they provide a mechanism for placing resources in areas of real need. **FBI**

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**Footnotes**

[1] William G. Gay et al., *Improving Patrol Productivity: Volume I, Routine Patrol* (Washington, D.C.: U.S. Government Printing Office, 1977), p. 5.

[2] Gordon P. Whitaker, "What is Patrol Work," *Police Studies*, vol. 4, No. 4, 1982, p. 22.

[3] LeRoy Banham, "Directed Patrol System Increases Effectiveness," *Connecticut Police Chief*, vol. 1, No. 2, p. 30.

[4] Frank G. MacAloon, "Conventional Patrol a Boring Gas Waster," *Law and Order*, November 1979, p. 6.

[5] James H. Auten, "Crime Prevention and Police Patrol," *The Police Chief*, August 1981, p. 62.

[6] Ibid., p. 63.

[7] Supra note 1, p. 107.

[8] Supra note 5, p. 66.

[9] John T. Donohue, "Crime Data Analysis: The Weak Link in Community Crime Prevention Programs," *The Police Chief*, March 1982, p. 35.

[10] Stephen Schack et al., *Improving Patrol Productivity, Volume 2, Specialized Patrol* (Washington, D.C.: U.S. Government Printing Office, 1977), p. 62.

[11] Supra note 3, p. 31.

[12] Supra note 1, pp. 150-151.

[13] Supra note 1, pp. 152-154.

[14] Supra note 10, p. 116.

[15] Lawrence J. Szynkowski, "Preventative Patrol: Traditional vs. Specialized," *Journal of Police Science and Administration*, vol. 9, No. 2, p. 167.

# Spouse Abuse

## The Need for New Law Enforcement Responses

By
NANCY LOVING
*Director of Family Violence Programs*
*Police Executive Research Forum*
*Washington, D.C.*
and
MICHAEL QUIRK
*Special Agent*
*Federal Bureau of Investigation*
*Atlanta, Ga.*

In recent years, family violence has become an increasingly visible and important social issue. Public awareness of family violence began to develop during the late 1960's, when child abuse was identified as a major problem. More recently, spouse abuse (defined as violent acts [1] among married and unmarried sexual partners) has been acknowledged as equally serious. Many consider these assaults to be among the most frequent and underreported crimes in the United States. Over 2,800 homicides a year occur among family members, and it would not be unreasonable to assume that the victims of lesser forms of family violence number several million each year. Further, the effects of such violence are not confined to family members. The *FBI Uniform Crime Report* data show that 32 percent of the reported assaults on officers during 1976-1980 occurred in connection with "responding to a disturbance call," [2] as did 16 percent of all officer deaths during this 5-year period.[3] These assaults represent an enormous drain on public resources, as they consume significant amounts of police officer and prosecutor time. Taxpayers' dollars are also spent on a range of social services, mental health programs, emergency shelters, and child protection services for these families.

**Police Intervention**

Increased involvement of the criminal justice system has been advocated as a primary means of reducing spouse abuse. Particular pressure is being placed on the police to intervene more directly in these cases to protect the victims and arrest the assailants. Some officers resent this trend because they, along with many citizens, believe these cases are private matters and not a part of "real" police work. Trained, socialized, and rewarded to apprehend and arrest felons, many officers resent these victims for distracting them from their preferred crimefighting activities. Moreover, frustration often turns into either hostility or indifference when officers repeatedly encounter victims who are routinely beaten and fail to press charges or return to the battering relationship. If these victims refuse to help themselves, the officers conclude that there is little they can do for them. This attitude is further complicated by the belief of officers that many of the victims provoke the attack and get only what they deserve or that the couple is engaged in a sadomasochistic relationship. More often than not, many of the real reasons women stay in battering relationships—economic dependence, fear, and learned helplessness—are not apparent.

Other police officers willingly accept intervention into spousal violence cases as a legitimate part of their duties, but they are more concerned with their lack of training to handle these calls effectively. They may be particularly sensitive to the physical danger these calls pose for all police officers, and as a result, respond in a hasty or superficial manner. Many officers have found spouse abuse to be a frustrating

*Ms. Loving*

problem because, until recently, there have been no social services or shelters to which they could refer victims or assailants for long term assistance. Even when services are available, officers can become frustrated and indifferent because they are seldom able to determine from the agencies whether their intervention was helpful.

The new emphasis on arrest in spouse abuse cases is of particular concern to many police officers. Until recently, police in most jurisdictions were trained to avoid arrest in this type of case or were restricted by statute to making a warrantless arrest in a misdemeanor assault case if the assault occurred in their presence. New laws in 20 States, however, have greatly expanded police arrest powers in these cases, making probable cause sufficient for a warrantless misdemeanor assault arrest.[4] Even so, some officers resent arrest mandates as intrusions on their professional judgment and flexibility, while others regard them as a narrow-minded approach that will have a minimum effect on the overall problem. Painfully aware of the overcrowding in jails and delays in the court proceedings, many officers believe that a singular reliance on arrest in response to these calls is neither realistic nor effective.

Another important concern for many officers is the increased threat of civil litigation as a result of these new arrest requirements. Facing greater public scrutiny of their performance, officers are particularly susceptible to charges of false arrest, false imprisonment, and improper or excessive use of force. Noting these risks, 11 States have enacted police immunity laws to protect officers against civil suits for action taken in a good-faith effort to enforce the provisions of a domestic violence statute.[5]

Changes in emphasis of police interventions illustrate the continuing problem that family crises pose for police agencies. These crises raise conflicts between the family's right to privacy and the right to equal protection under the law for each family member, as well as challenge cultural traditions that place a high value on harmonious family life

The last 2 decades have seen an increasing tendency for law enforcement agencies to seek and apply the expertise of behavioral and social scientists to police work. This alliance has revolutionized the ways the criminal justice system deals with the mentally ill, the homeless, and juvenile offenders. A part of this revolution has been the adoption of crisis intervention techniques for dealing with disputes between neighbors, landlords and tenants, and family members. Generally, these procedures call for the responding officer to calm the dispute, listen carefully to both parties without showing favoritism or fixing blame, and suggest ways to resolve the problem without involvement of the criminal justice system. Although useful in many contexts, the techniques of mediation and negotiation are applicable particularly in spousal conflicts that do not involve the use of violence.

The failure to make the distinction between spousal conflicts that involve the use or threatened use of violence and those that do not results in confu-

*Special Agent Quirk*

sion and poor police performance. By combining all family calls into one broad category and assigning it a low-priority status, important distinctions have been overlooked, procedures have remained irrelevant, and most important, the victims and police officers have suffered repeated assaults and injuries. It must be emphasized, however, that the failure to make these distinctions is not unique to law enforcement. Until recently, both social service agencies and the judiciary were committed to the philosophy and practice of keeping the family unit together at all costs, a commitment which is slowly being replaced with a more realistic approach that acknowledges the need for some couples to divorce.

## Pressures for Change

Women's rights groups have criticized police handling of spousal violence calls mainly because of the officers' refusal to make arrests in these situations. They are particularly offended by the terminology of the crisis intervention approach, which labels these calls "a dispute" or "a conflict" and the people involved "the disputants." This language, they believe, hides the prevalence of wife beating cases. Moreover, they view some officers' insistence on taking a neutral stand in these situations as possibly resulting in subtle encouragement to assailants. The same may also be said of the failure to arrest the assailants who, they contend, may continue the assaults if they are not punished. These beliefs have led several women's groups to file class action suits against law enforcement agencies, charging negligence and violation of the victims' civil rights. The most notable of these cases, *Bruno* v. *Codd*,[6] was brought by 12 battered women against the New York City Family Court. In a June 1978, consent decree that settled the case, the department agreed to make arrests when there is reasonable cause to believe that husbands have committed felonious assault against their wives and to send one or more police officers in response to every call from a woman who charges that her husband has assaulted or threatened to assault her. The police also agreed to inform a battered wife of her rights to a criminal or civil court proceeding, to provide protection or aid in getting medical help if she needs it, and to help in locating the assailant if he has left the scene.

In a similar case in Oakland, Calif., a group of battered women brought a class action lawsuit against the Oakland Police Department,[7] charging that wife beating calls were given a low priority and that officers responded to them with a policy of avoiding arrests. They also charged that the police did not inform victims of their rights to make citizens' arrests. In an out-of-court settlement in November 1979, the department agreed to treat all domestic violence as alleged criminal conduct and to make arrests in appropriate cases. It also agreed to develop new training materials and implementing orders to include the development and distribution of a resource brochure for battered women.

In addition to these lawsuits, many State legislatures have enacted statutes specifically designed to reduce spouse abuse. The statutes have several or all of the following provisions:

> **". . . many State legislatures have enacted statutes specifically designed to reduce spouse abuse."**

1) Identify "spouse abuse" or "domestic violence" as a specific crime;
2) Grant criminal court jurisdiction over certain family offenses;
3) Make violation of a restraining order a criminal offense; and
4) Eliminate requirements that a misdemeanor assault occur in an officer's presence before an arrest can be made.

**Need for Policy Guidelines**

In 1979, the Police Executive Research Forum conducted a study for the Law Enforcement Assistance Administration (LEAA) to determine how law enforcement agencies could improve their response to spouse abuse calls. Among the most important conclusions of the final report was the need for law enforcement agencies to update and revise their policies and operational procedures for these calls.[8] Too many agencies, it was found, were relying on the crisis intervention approach developed in the late 1960's, with its emphasis on reconciliation of the parties and arrest avoidance. The forum report recommended that law enforcement agencies' policy statements address the following areas: 1) Proper use of law enforcement actions against the assailant; 2) extent of attention and protective services given to the victim; 3) proper use and enforcement of civil remedies; 4) proper use of civilian social service aides; and 5) nature of relationships with social service agencies and battered women's groups.

The report also recommended new agency procedures that would provide officers with practical guidelines for performing their proper functions when restoring order and safety, determining whether a crime has been committed and taking proper law enforcement actions, and making social service and legal agency referrals for family members. New procedures and programs should be monitored and evaluated for several years. In addition, a mechanism should be established to determine the abused victims' satisfaction with the procedures, to process their complaints, and to review the effectiveness of new police training programs.

Another important task is the development of arrest criteria for spouse abuse cases. The forum report, for instance, recommends that arrests be made in cases involving serious injury, use of deadly weapon, and/or violation of a restraining order.[9] Other arrest guidelines, such as those developed by the Chicago Police Department, list the following factors as indicating that an arrest should be made:[10]

1) *Serious, Intense Conflict*—Officers must first consider the nature and intensity of the dispute. Intense disputes of a serious nature most often require an immediate arrest. An intentionally inflicted serious injury certainly requires arrest of the offending party for battery. Likewise, severe property damage is a measure of dangerous aggression which may call for an arrest. However, officers must remember that damage to coowned property is a civil matter. Any resulting arrest cannot be based on damage to the property, but should be based on the assault or disorderly acts committed.

2) *Use of Weapons*—If the parties have indicated any intent to use an inherently or potentially dangerous object during the dispute, either offensively or defensively, an immediate arrest of the offending party would be appropriate to prevent a further, more serious confrontation.

3) *Previous Injury or Damage*—If the complainant has previously been a victim of the offending party's aggression, officers should consider the extent of any previous injury or damage. The present conflict could become more serious if an immediate arrest is not made.

4) *Previous Court Appearance*—A previous criminal court appearance against the offending party may strongly indicate a victim's sincerity to prosecute. An immediate arrest should be made when it is apparent that the victim's interest would be best served by returning the parties to the court that handled the former complaint.

5) *Previous Attempt to Sever the Relationship*—If there has been a previous voluntary separation of the parties, indicating an attempt to end the relationship, there is less need to consider the disruptive effects an arrest may have on the relationship. If the parties have separated, intrusion should be considered an aggravating factor.

> **"All segments of the criminal justice system must be sensitized to the serious nature of these cases and to the need to hold the assailants accountable for their action."**

6) *Second Call to Police*—A second call for police service may indicate that conciliatory measures have failed. An arrest would be appropriate to avoid further escalation of the dispute after officers again leave the scene.

7) *Children or Mentally Deficient or Intoxicated Parties Involved*—When children or mentally deficient or intoxicated individuals are assailants or victims in domestic conflicts, special consideration is required. As assailants, they are not easily reasoned with, and as victims, they are not easily able to avail themselves of criminal, civil, or other remedies. The discretionary latitude of officers is far more limited in such circumstances, and an arrest is more likely to be appropriate. When an arrest is appropriate, officers must ensure that provisions are made for the care of children who would otherwise be left unattended.

Another set of arrest standards for domestic violence cases was issued by the Westchester County, N.Y., district attorney in December 1978.[11] They mandate arrest in the following cases:

1) Whenever a gun, a deadly weapon, or a dangerous instrument has been used,

2) Whenever there is reasonable cause to believe that a felony has been committed,

3) Whenever there has been a maiming or other serious physical injury,

4) Whenever there is a history of criminal activity between the parties and where the defendant's record indicates violent criminal history, and

5) Where, in the judgment of the police officer, the sanction of an arrest appears necessary for the future protection of the victim.

A third approach to arrest criteria was published in a revised domestic violence training manual of the Oakland, Calif., Police Department, which states: "It should be presumed that arrest is the most appropriate response in domestic violence crimes which involve apparent felonies, allegations of repeated acts of violence, situations where an offense is committed in your presence, and situations in which a citizen's arrest is demanded."[12]

In many jurisdictions, if police officers choose not to arrest an assailant for a misdemeanor assault, they may initiate several effective law enforcement actions where permitted by State law. These include:

1) *Misdemeanor citations*—Similar to traffic tickets, these citations are issued as a condition of release from police custody. They require the assailant to promise to appear at a hearing and post bail that will be returned. An assailant who does not appear is considered guilty of the misdemeanor and forfeits the money. The assailant also will lose the money if he loses the case. This citation could lead to the assailant's arrest only if a magistrate issued a warrant when the assailant did not post bail or did not appear at the court hearing.

2) *Protective custody*—Used in lieu of arrest to keep a citizen lawfully in police custody for 1 or 2 days in situations where the person is drunk, appears mentally unstable, or acts out of control.

3) *Domestic violence summons*—Currently issued in Ohio in cases where there are insufficient grounds for arrest. Both parties in a domestic violence case are required to participate in a voluntary counseling program. This is a method of diversion from the criminal justice system, but prosecution may be considered if the resulting arbitrated agreement is broken by either party.

4) *Domestic violence temporary restraining order*—May be filed in municipal courts by police officers after arresting an assailant or filing a criminal complaint against the assailant with the prosecutor. The restraining order is used as a means of ensuring the safety and protection of the victim. A hearing on this motion must take place within a given period of time, and the presence of the officer may be required at the hearing.

## Liaison Efforts

While police can do much to improve their responses to spouse abuse cases, they alone cannot reduce the problem. All segments of the criminal justice system must be sensitized to the serious nature of these cases and to the need to hold the assailants accountable for their action. Moreover, community resources must be available to deal with the underlying cases of the abuse on a long term basis. Emergency shelters, 24-hour hotlines, counseling programs for victims and batterers, and legal services must be available. Since police are often the only outsiders to be summoned during these violent conflicts, it is imperative that they have both the necessary diagnostic skills to determine what kind of assistance is necessary and reliable information about available social services in the community.

Since these cases often grow more violent over time, police can help monitor for patterns of repeat abuse. In Westchester County, N.Y., for example, officers are required to notify the district attorney of all spouse abuse incidents, including those that do not involve arrest. The district attorney then sends a letter to the assailant, either directing him to cease the abuse or to come in for consultation. Another letter is sent to the victim informing her of available options. A case file is then established on the household and monitored for subsequent incidents.

Another approach developed by the Detroit, Mich., Police Department involves the use of a triplicate-copy social service referral card for officers' use in these cases. One copy is sent to the social service agency to which the victim has been referred by officers, another is sent to a police department domestic conflict monitoring project, and the third copy is left with the victim, who can use it as proof of prior abuse during subsequent police intervention.

These cooperative efforts can be augmented by numerous other activities, such as officers distributing referral cards for battered women's shelters to victims, providing victims with information about legal remedies, and encouraging assailants to enter treatment programs.

## Training

All police officers should be trained to handle spouse abuse. The stress and danger involved in these calls make it imperative that responding officers learn not only how to defuse and contain these situations but also how to ensure the safety of all involved parties. Because many of those cases tend to regress over time, officers must learn to respond in ways that will neither escalate the immediate violence nor contribute to a subsequent deterioration of the situation. Police training programs should be designed to improve officers' intellectual grasp of the nature of the problem and clarify their law enforcement duties in these cases.

The training program should also teach the officers how and when they should instigate the options available to them, such as arrests, citations, restraining orders, and crisis intervention skills. Additional training topics should include safety precautions, medical procedures, and techniques for establishing order and security.

A serious problem that police training programs must seek to overcome is the negative attitude held by many police officers—that spousal violence calls are a nuisance, that they do not constitute "real" police work, and that family matters are not the province of the police. These attitudes, which themselves are a byproduct of poor training, contribute to insensitive and hostile police responses and to a failure to provide spouse abuse victims with adequate protection. Such practices, as we have seen, can be traced to numerous factors, including the refusal of many victims to press charges or to remove themselves from the battering relationship. The tendencies of some officers to be preoccupied with their crimefighting mission and of some administrators to urge officers to resolve these calls quickly in order to reduce service call backlog contribute to this problem.

During 1981, an innovative training course on family violence was developed at the FBI Academy at Quantico, Va., and incorporated into the National Academy curriculum to supplement its traditional training programs. "Family Violence—New Approaches for Police," a 10-hour elective, emphasizes the need for police coordination between police departments, prosecutors, and community service agencies. The curriculum included guidelines for making social service referrals for abuse victims, arresting and prosecuting batterers, and detecting and investigating child sexual assault cases. Films and guest speakers were used to acquaint the officers with the dynamics of spouse abuse and with the cyclical nature of the abusive behavior. Student officers reported that what they learned in the course made their jobs easier. "Two rewards for making changes in the way law enforcement

**"Few officers have been properly trained to handle these volatile calls. . . ."**

takes care of these calls are being injured less often and being called less frequently to the same homes," one California police officer remarked. A New York City police officer added, "As an investigator, my job is easier if the guy on the street handles these cases right. If they do, I won't have so many homicides on my desk."

Recently, the Police Executive Research Forum published a comprehensive curriculum for law enforcement training officers.[13] It presents a complete 20-hour course and includes materials for use in five 4-hour sessions, including understanding spouse abuse, statutory requirements, officer procedure and legal issues, responding to the call, disposition alternatives, and using community resources. Suggestions for lecture format, films, group discussions, and panel presentations are provided, as well as materials to be used as handouts to officers.

## Summary

Patrol officers are often required to respond to calls for help in cases involving violence among married and unmarried couples. Citizens are relying increasingly on the 24-hour availability of law enforcement officers and their ability both to "do something" to stop the violence and to provide counseling and emergency services. Officers routinely respond to these calls, often to the same households, and occasionally become targets of the violence. Few officers have been properly trained to handle these volatile calls, and as a result, often use their own discretion and instinct to resolve them.

Wide variation in police responses to these calls have been the norm for many years. Not only have police been pressured to focus their resources on violent street crimes, but they have reflected a larger cultural tradition which regards family matters as private. During the past few years, however, as spouse abuse has dramatically emerged as a major social problem, public scrutiny has focused on all aspects of the problem. Law enforcement agencies have been singled out for particularly harsh criticism for failure to provide victims with adequate protection and for not making arrests in cases involving felony assaults.

The traditional law enforcement response to these calls, emphasizing crisis intervention skills and reconciliation of the parties, is inappropriate in cases involving serious injury or repeated abuse and is not effective for reducing the number of spouse abuse incidents. In fact, it may aggravate the problem by suggesting to assailants that their violent behavior can be overlooked. Thus, the need for a new law enforcement response to spousal violence calls is clear, both to provide adequate protection to the victims and to ensure the safety of the responding officers. New perceptions of this major social problem have resulted in pressures for effective solutions, not the least of which will be effective and humane law enforcement policies and procedures. **FBI**

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**Footnotes**

[1] A physical violence scale, developed by Dr. Murray Straus of the University of New Hampshire, identifies the following acts as spouse abuse: Throwing things; pushing, shoving or grabbing; slapping; kicking, biting or hitting with fist; beating up, threatening with knife or gun; and using knife or gun. See Murray Straus, "Wife Beating: Causes, Treatment and Research Needs," *Battered Women: Issues In Public Police* (Washington, D.C.: U.S. Civil Rights Commission, 1978) p. 470.

[2] Disturbance calls include all types, e.g., man with a gun, bar fights, family quarrels, etc.

[3] U.S. Department of Justice, Federal Bureau of Investigation, CRIME IN THE UNITED STATES—*1976*, pp. 286–288; *1977*, pp. 286–288; *1978*, pp. 302–305; *1979*, pp. 304–306; *1980*, pp. 336–388 (Washington, D.C.: Government Printing Office).

[4] ALAS. STAT. §§ 09.55.600–09.55.640, 12.55.135, 22.15.100; ARIZ. REV. STAT. §§ 13.3601, 13.3602 (Supp. 1980) as amended by ch. 224, 1981 Ariz. Legis. Serv., p. 796 (West 1981); FLA. STAT. ANN. § 741.30 (West Supp. 1980); HAWAII REV. STAT. § 709.906 (1976) as amended by Act 266, 1980 Hawaii Sess. Laws p. — —; IDAHO CODE § 19-603 (1947 and Supp. 1979); ILL. ANN. STAT. ch. 85 § 507–a (Smith-Hurd 1979) as amended by H.B. 366 (enacted 1981); KY. REV. STAT. § 431.005 (Supp. 1980); ME. REV. STAT. ANN. tit. 19 §§ 769, 770 (1964) as amended by ch. 420, 1981 Me. Legis. Serv., p. 836; MASS. GEN. LAWS ANN. ch. 276 §§ 28, 42A (West 1972 and Supp. 1980); MICH. COMP. LAWS ANN. §§ 764.15a, 769.4a, 772.13, 772.14a (West Supp. 1979); MINN. STAT. ANN. § 629.341 (Supp. 1980); NEV. REV. STAT. § 171.124 (1979); N.H. REV. STAT. ANN. § 594: 10–1 (Supp. 1979); N.M. STAT. ANN. § 31–1–7 (Supp. 1978); N.Y. FAM. CT. ACT § 168 (McKinney 1975 and Supp. 1976–1980) as amended by ch. 416, 1981 N.Y. Laws, p. — —; OHIO REV. CODE ANN. §§ 109.73, 109.77, 2935.03, 737.11 (Page Supp. 1980); ORE. REV. STAT. §§ 107.7, 133.055, 133.310 (1977); R.I. GEN. LAWS § 11–5–9 (Supp. 1980); TEX. CODE CRIM. PROC. ANN. art. 14.03 (Vernon 1977) as amended by ch. 422, 1981 Tex. Sess. Law Serv., p. 1865; WASH. REV. CODE ANN. §§ 10.99.010–10.99.070 (1980). A State-by-State summary analysis of domestic violence legislation may be obtained for $5.00 from the Center for Women Policy Studies, 2000 P Street, N.W., Washington, D.C., 20036.

[5] ARIZ. REV. STAT. §§ 13.3601, 13.3602 (Supp. 1980) as amended by ch. 224, 1981 Ariz. Legis. Serv., p. 796 (West 1981); ILL. ANN. STAT. ch. 85, § 507–a (Smith-Hurd 1979) as amended by H.B. 366 (enacted 1981); IOWA CODE ANN. § 236–11 (West Supp. 1980); MINN. STAT. ANN. § 629.341 (Supp. 1980); N.H. REV. STAT. ANN. § 594–10–1 (Supp. 1979); N.M. STAT. ANN. § 31–1–7 (Supp. 1978); N.C. GEN. STAT. §§ 50B-1–50B-7 (Supp. No. 5, 1979); N.D. CENT. CODE §§ 14–07.1–01–14.–07.1–08, 29–01–15(4) (Supp. 1979) as amended by N.D.S.B. 2339 (enacted 1981); ORE. REV. STAT. §§ 107.7, 133.055, 133.310 (1977); UTAH CODE ANN. §§ 30–6–1 - 30–6–8 (Supp. 1979); WASH. REV. CODE ANN. §§ 10.99.010–10.99.070 (1980).

[6] *Bruno* v. *Codd*, 90 Misc. 2d 1047, 396 N.Y.S. 2d 974 (Supreme Court 1977).

[7] *Scott* v. *Hart*, No. 6–76–2395 (N.D. Cal., filed October 28, 1976).

[8] Nancy Loving, *Responding to Spouse Abuse and Wife Beating: A Guide for Police* (Washington, D.C.: Police Executive Research Forum, 1980).

[9] Ibid. p. 61.

[10] Warren Breslin, "Police Intervention in Domestic Confrontations," *Journal of Police Science and Administration*, September 1978.

[11] Carl U. Vergan, "Domestic Violence Laws," *Criminal Law News*, vol. IX, No. 1, December 1978.

[12] Oakland Police Department, *Training Bulletin III–J (Revised) Domestic Disputes*, Oakland, Calif., Police Department, November 1979, p. 8.

[13] Nancy Loving, *Spouse Abuse: A Curriculum Guide for Police Trainers* (Washington, D.C.: Police Executive Research Forum, 1981).

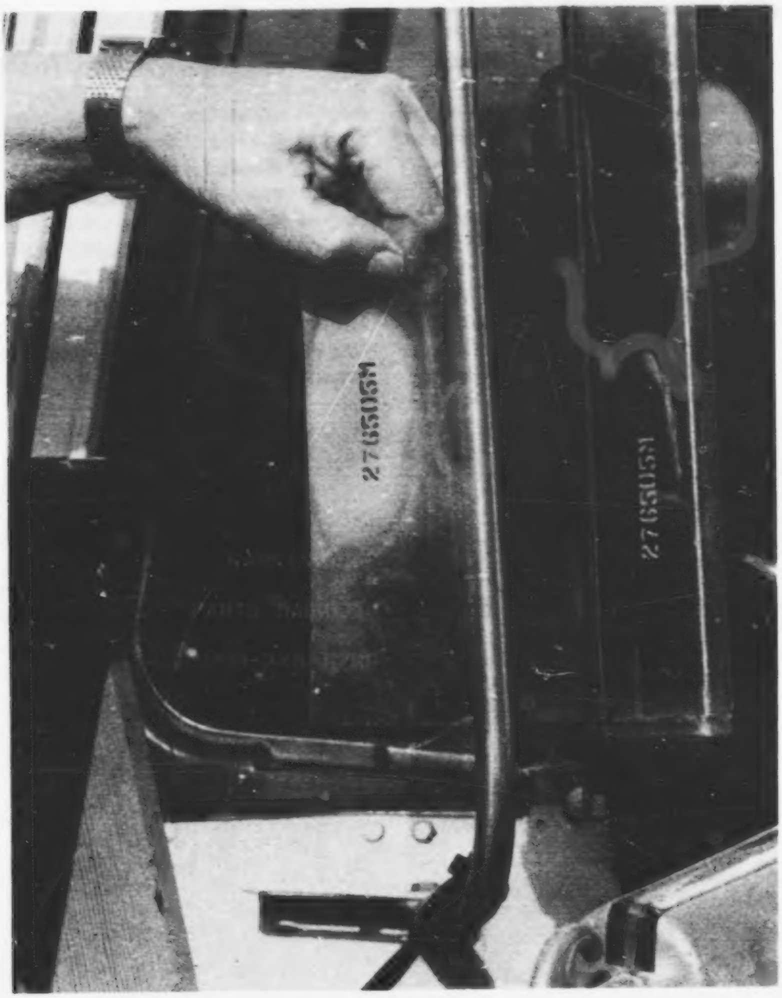
The scene is a familiar one. A truck tractor is stolen from a terminal yard, a truck stop, or off the street. It is immediately delivered to a location where a team of mechanics will dismantle the vehicle. Within a matter of hours, the remains of the truck tractor are being sent in different directions for use in repair of other vehicles or in the completion of a new truck tractor started from a glider kit. The vehicle that was originally stolen is gone forever, and it is unlikely that it will ever be recovered or that the thieves or dismantlers will be apprehended.

# Pilot Program Attacks Truck Theft

By
LOUIS E. BRACKSIECK
*Special Agent*
*Federal Bureau of Investigation*
*Washington, D.C.*

Based on statistical review of data from the FBI National Crime Information Center (NCIC), approximately 1,500 stolen truck tractors were entered into the system each month during calendar year 1981. For the same period, approximately 1,100 truck tractors were cleared or canceled per month. This disparity between the entries and clearances and cancellations, graphically profiles a nagging problem in the trucking industry as well as in law enforcement—more trucks are stolen than are recovered.

A private organization is now attacking this problem with an identification program designed to deter potential thieves and to assist law enforcement officers. The Truck Renting and Leasing Association (TRALA),



*The sandblasting gun and the template held at the left of this photograph combine to quickly and clearly etch the full vehicle identification number onto and outside rearview mirror.*

*Special Agent Bracksieck*

which represents 300 member companies engaged in truck and trailer rental and leasing, has initiated a pilot program in the Atlanta, Ga., area to mark over 2,500 tractors. In approximately 40 minutes, using a small sandblasting gun and a template cut from plastic, two men can mark a truck tractor in approximately 40 locations with the full vehicle identification number (VIN). Many of the markings are in easily seen places such as windows, grillwork, bumpers, fuel tanks, and frame members. Hidden areas, as well as the major component parts, are also etched. Such widespread markings are expected to discourage thieves from attempting to change numbers on stolen vehicles and chop shop operators from using these parts.

In addition to the numbering procedure, warning decals are affixed to the vent window on the driver's side and to the vehicle dash. The decals indicate that the markings have been made and provide a telephone number law enforcement officers can call if a vehicle is located. In addition, large signs will be prominently displayed at truck terminals to serve as a warning to potential thieves.

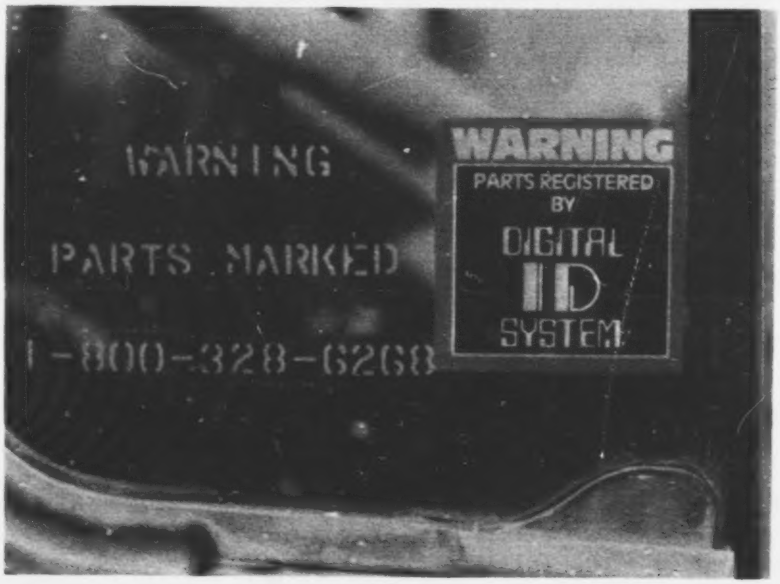
This program was inaugurated in March 1982, after a 2-year study of the truck theft problem by TRALA's Insurance Safety and Security Committee. The FBI supported the idea throughout its development.

A member of the committee suggested the marking program based on his experience with a similar effort at a car rental business. Beginning with a fleet in Chicago, the car rental establishment marked over 6,000 automobiles in an 18-month period in four cities, with favorable results. In a report to the committee, it was noted that after placing 20 VIN's on each car, thefts dropped dramatically and recovery rates improved to almost 100 percent.

The chairman of TRALA's Insurance Safety and Security Committee has reported an enthusiastic response from the operations personnel at the various participating companies. The committee will collect data to evaluate the success of the pilot. A reduction in thefts and improvement in recovery rate will be the benchmark of a successful program.

Law enforcement personnel will also benefit from this project. Proper vehicle identification is a critical element in any vehicle theft investigation. Through the use of this marking method, identification will be significantly aided, making the investigator's job somewhat easier.

TRALA's effort could help solve many cases in the future. It is almost certain that a successful pilot program will lead to more widespread participation, not only by TRALA members but throughout the trucking industry. **FBI**



*A warning decal is prominently displayed in an easily seen area, and the glass is marked with a warning and toll free telephone number which can be called by an investigator.*

# PROBABLE CAUSE: INFORMANT INFORMATION

## (CONCLUSION)

By
ROBERT L. McGUINESS
*Special Agent*
*FBI Academy*
*Legal Counsel Division*
*Federal Bureau of Investigation*
*Quantico, Va.*

*Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.*

The first part of this article dealt with meeting the *Aguilar* standard for the use of hearsay information in establishing probable cause. The conclusion deals with corroboration of hearsay information and other approaches that might be taken to establish probable cause while protecting the identity of an informant.

**Corroboration**

A strict reading of *Aguilar* might lead to the conclusion that corroboration is only pertinent to the second prong of the *Aguilar* test, since in defining the second prong, the Court noted that it could be satisfied by facts showing that "the informant was 'credible' *or his information 'reliable'* " (emphasis added). The phrase "or his information reliable" would appear to have reference to corroboration. However, another statement in *Aguilar* suggested that corroboration may be sufficient to cure both prongs.[74] The first corroboration case to be considered by the Court after *Aguilar*, namely, *Spinelli* v. *United States*,[75] resolved this question and established that corroboration could in fact cure both prongs of the test.

Before considering the facts of *Spinelli*, however, a pre-*Aguilar* corroboration case must be considered, namely, *Draper* v. *United States*.[76] The *Draper* case establishes a particular type of corroboration, which the Court in *Spinelli* approves of.

**Corroboration *a la Draper:* Verifying the Details of a Tip**

*Draper* v. *United States* involved a criminal informant who had been furnishing information to an agent of the Bureau of Narcotics over a 6-month period, which information the agent had always found to be "accurate and reliable." The informant told the agent that " 'Draper had gone to Chicago the day before [September 6] by train [and] that he was going to bring back three ounces of heroin [and] that he would return to Denver either on the morning of the 8th of September or the morning of the 9th of September also by train.' " The informant furnished the agent with a detailed physical description of Draper (a Negro of light brown complexion, 27 years old, 5'8" tall, weighing about 160 pounds) and a detailed description of the clothing he would be wearing (light-colored raincoat, brown slacks, and black shoes). The informant also stated that Draper would be carrying a tan zipper bag and that he habitually "walked real fast." Armed with this information, on September 9th, law enforcement officers saw a person alight from an incoming Chicago train who exactly fit the description given by the informant. Moreover, the individual was walking fast and carrying a tan zipper bag. At this point, Draper was arrested and a search incident to arrest uncovered two envelopes containing 865 grams of heroin and a syringe. On the basis of these facts, the Court held that the agent, having "personally verified every facet of the information given him by [the informant] . . ., had 'reasonable grounds' to believe that the remaining unverified bit of . . . information—that Draper would have the heroin with him—was likewise true."

Thus, the Court adopted the principle that corroboration may take the form of simply verifying the details of a tip, though the details may not be of a suspicious nature. The exact contours of this principle were later refined in *Spinelli* v. *United States*.[77]

Special Agent McGuiness

### The *Spinelli* Case

In *Spinelli* v. *United States*, an affidavit for a search warrant set out the following informant's tip:

> "The Federal Bureau of Investigation has been informed by a confidential reliable informant that William Spinelli is operating a handbook and accepting wagers and disseminating wagering information by means of the telephones which have been assigned the numbers WYdown 4-0029 and WYdown 4-0136." [78]

The tip clearly failed the basis of knowledge prong of the *Aguilar* test by not stating how the informant came by his information. Moreover, the affidavit failed to establish the informant's veracity, such as by a statement of prior performance. The FBI, however, had verified that Spinelli was seen entering an apartment to which the telephone numbers disclosed in the tip were assigned. The argument was advanced that by having confirmed this detail, corroboration a la *Draper* had been made, thus transforming the otherwise insufficient tip into probable cause. The Court answered this contention as follows: "Independent police work in that case [Draper] corroborated much more than one small detail that had been provided by the informant." Thus, the Court did not overrule *Draper*, nor did it indicate that corroboration of innocent details was insufficient to cure both prongs of the *Aguilar* test. What *Spinelli* did establish is that if the type of corroboration employed is that of simply verifying details of a tip that are nonsuspicious in nature, *i.e.*, those not suggesting the crime under investigation, there must be a significant number of details verified—not just one detail.[79]

Another illustration of this is the case of *United States* v. *Larkin*,[80] decided by the U.S. Court of Appeals for the Ninth Circuit. In *Larkin*, a first-time informant's tip reported that a 1972 black-on-blue "blazer-type" vehicle, bearing a specific license plate number and proceeding from El Centro, Calif., to Los Angeles, would be transporting narcotics. An officer spotted such a vehicle on the same morning he received the tip. The defendant was arrested and a search of the vehicle uncovered narcotics. The court held that this tip, not meeting both prongs of *Aguilar*, was not sufficiently corroborated in the *Draper* sense, since only a few details were verified, as opposed to *Draper* where a "wealth of detail" was corroborated.

Thus, if an officer intends to rely on this type of corroboration, *i.e.*, verifying nonsuspicious details of a tip, he should elicit from the informant as many facts as possible concerning the subject and his activities. Information as to the subject's address, telephone number, description, occupation, vehicles owned, etc., would be relevant. As to the subject's conduct, all details concerning the manner in which he is carrying out the crime should be obtained for verification.

A type of "verifying the details" corroboration that is convincing is where detailed information not generally known to the public concerning the prior commission of a crime is furnished by an informant and verified. For instance, in *People* v. *Clay*,[81] an informant stated that the defendants told him that they committed an armed robbery and showed him the shotgun employed and the money taken in the crime. The informant then supplied detailed descriptions of the suspects. All

**". . . if the type of corroboration employed is that of simply verifying details of a tip that are nonsuspicious in nature . . . there must be a significant number of details verified—not just one detail."**

of this information concerning the crime was checked and found to be accurate. The court found this to be adequate corroboration and sufficient to establish probable cause.

### Suspicious Conduct

Perhaps a better form of corroboration is that of uncovering suspicious conduct on the suspect's part which suggests the crime under investigation. In other words, the corroboration does not just confirm some innocent details of a tip, as was done in *Draper*, but detects facts and circumstances which connote the crime at hand. This was a second contention of the Government in *Spinelli*. The Government argued that the following facts, taken together, were sufficient corroboration of the informant's tip:

1) Observing Spinelli travel from Illinois to St. Louis, Mo. on four occasions;
2) Observing Spinelli enter an apartment to which the telephone numbers referred to above were assigned; and
3) The fact that Spinelli was known to be "a bookmaker . . . (and) gambler . . . ."

The Court held that this was insufficient. Traveling from one State to another and entering an apartment can "hardly be taken as bespeaking gambling activity." Being in an apartment that has two separate telephone lines is not unusual. "Many a householder indulges himself in this petty luxury." Even when both of these facts are taken together, they raise "no suggestion of criminal conduct," nor should they be "endowed with an aura of suspicion by virtue of the informer's tip." Moreover, merely stating that a person is a bookmaker and gambler is wholly conclusory—"a bald and unilluminating assertion of suspicion that is entitled to no weight" in assessing probable cause.

Thus, there must be facts and circumstances observed or disclosed which in themselves are suspicious, *i.e.*, suggest the crime under investigation, to fit this type of corroboration. Indeed, the Supreme Court noted that had it been shown that the apartment which Spinelli visited contained an "unusual number of telephones" or if "abnormal activity" had been observed, a different case would be before the Court.

An excellent example of this is found in the Maryland case of *Dawson* v. *State*[62] which, also being a gambling investigation, serves as a useful comparison with *Spinelli*. In *Dawson*, the officer began his affidavit by reciting his investigative experience with respect to gambling in order to demonstrate his basis for believing that certain of the facts set out in the affidavit were suspicious. The informant's tip, which did not meet the *Aguilar* two-pronged test, was then stated, along with information that:

1) Dawson was arrested and convicted of gambling violations less than 3 years previously;
2) Dawson was observed over a 2-week period without ever seeing him engaged in a legitimate business;
3) Dawson had two separate unlisted telephones at his residence, and one of the numbers was previously discovered in the course of a raid of an illegal lottery operation;
4) Dawson was observed each day purchasing a scratch sheet;
5) Dawson was observed each day stopping at a number of places, including liquor stores and restaurants, for periods of no more than several minutes and was never observed to purchase anything [the officer indicated that this is characteristic of the "pick-up man" phase of a gambling operation];
6) Dawson returned to his house before noon daily and remained there until after 6:00 p.m. [the officer indicated that this is when number and horse race bets are normally placed and when results become available]; and
7) On one occasion, Dawson was observed to spend the day with a named person who had been previously arrested for gambling violations.

In concluding that probable cause could be found from these facts, the court stated:

> "The appellant urges strongly that not one of his observed activities could not easily have been engaged in by an innocent man. That is true. It is also beside the point. What the appellant ignores is that probable cause emerges not from any single constituent activity but, rather, from the overall pattern of activities. Each fragment of conduct may

**". . . an officer is well-advised to state in his affidavit the reason that certain circumstances are suspicious when the same facts would not strike such a note in the average person."**

> communicate nothing of significance, but the broad mosaic portrays a great deal. The whole may, indeed, be greater than the sum of its parts."[83]

The circumstances of the *Dawson* case, taken together, were unusual and inviting of explanation. The officer helped to demonstrate the suspicious nature of Dawson's conduct by specifically noting *why* he found Dawson's activities to be suspicious. Consequently, an officer is well-advised to state in his affidavit the reason that certain circumstances are suspicious when the same facts would not strike such a note in the average person.

### Second Independent Informant

Another avenue of corroboration is through a second informant whose report independently corroborates the first. Supreme Court authority for this type of corroboration is found in the pre-*Aguilar* cases of *Jones* v. *United States*[84] and *Rugendorf* v. *United States*,[85] and to a lesser extent, the 1971 case of *United States* v. *Harris*.[86] In each of these cases, however, there were additional elements of corroboration. In *Jones*, there was knowledge of the defendants' propensity for the crime from previous admissions to the use of narcotics and prior observations by the officer of needle marks on them; in *Rugendorf*, a police officer had furnished an element of corroboration to three informants' reports; in *Harris*, the main informant made a statement against his penal interest and contraband had previously been recovered from the defendant.

While there is no known authority stating that corroboration by a second informant is not sufficient in itself to establish probable cause, it is usually the case that this is not the only element of corroboration.[87] Thus, it would be worthwhile to bolster the affidavit with some additional elements of corroboration. In many cases, this may easily be done by some knowledge of defendant's background, such as previous convictions for the offense under investigation,[88] recovery of stolen goods or contraband, or previous admissions of wrongdoing;[89] the verification of some details of the tip;[90] the uncovering of some suspicious circumstances;[91] or the fact that one of the informants has made a statement against his penal interest.[92]

### Propensity for Committing the Crime

As indicated above, another type of corroboration recognized by the Supreme Court is that of the officer's knowledge of defendant's propensity for committing the crime under investigation. This may consist of knowledge of the defendant's prior criminal record for this offense,[93] previous admissions and observations of consistent conduct,[94] or the recovery of stolen property or contraband in the past.[95] However, this type of corroboration standing alone is never sufficient to establish probable cause.[96] This would be the practical equivalent of holding, as the Court said in *Beck* v. *Ohio*,[97] "that anyone with a previous criminal record could be arrested at will." Thus, it is a type of corroboration which can only be employed with other forms of corroboration to establish probable cause.

### Double Hearsay

Is the use of double hearsay from a criminal informant ever permissible? In other words, can information from an informant whose information is based on another's report to him be sufficient in itself? The courts have unanimously endorsed this when the information from each of the sources meets the *Aguilar* standard.[98] This is not difficult to comprehend when the double hearsay consists of information from a fellow law enforcement officer who is relaying information from his informant. However, what of the situation in which an informant repeats information to the officer from another and the officer seeks to act upon such? Assuming the primary hearsay information satisfies *Aguilar, i.e.*, the source states how he knows the information and he has a prior track record of reliability, and the secondary source's basis of knowledge is established, the question arises as to establishing the secondary source's veracity. Not being an informant as such, he will not have a track record of past performances for the officer to refer to. Two methods of satisfying the veracity prong for this secondary source have been recognized under these circumstances. First, his information might be a statement against his penal interests and therefore acceptable of belief.[99] But beyond this is the notion that when this secondary source is not bartering, selling, and trading his information directly to the police, the truth of his information can more readily be accepted.[100] For instance, in the Maryland case of *Thompson* v. *State*,[101] an informant of proven reliability attempted to make a purchase of narcotics from a street seller. The street seller advised the informant that he would not have any narcotics to sell until Thompson, his supplier, arrived with such, which would be at 1:00 p.m. The reliable informant knew Thompson to drive a particular vehicle. When the car arrived, it was searched, narcotics were discovered, and Thompson was arrested. Thompson challenged the search, since the probable cause was based upon double hearsay. In upholding the use of double hearsay, the court stated:

> "This street seller was . . . engaged in a purely commercial venture for his own profit. He was dealing with a regular and presumably valued customer. Being unable initially to satisfy his customer's demands, it was to his every advantage to assure the prompt return of that customer as soon as fresh merchandise was available for sale. He simply had no purpose in misleading his own clientele. The circumstances in which the seller passed on the information to a customer and confidant are replete, we think, with reasonable assurances of trustworthiness." [102]

Supreme Court authority for the use of double hearsay is found in the *Spinelli* case, previously discussed. In referring to the fact that the informant failed to state his basis of knowledge, the Court in *Spinelli* observed:

> "We are not told how the FBI's source received his information—it is not alleged that the informant personally observed Spinelli at work or that he had even placed a bet with him. *Moreover, if the informant came by the information indirectly, he did not explain why his sources were reliable.*" [103] (emphasis added)

Thus, the use of double hearsay is not constitutionally infirm. The informant, however, should be instructed to ascertain how his sources have acquired their information so that the basis of knowledge prong of the *Aguilar* test can be satisfied.

### Informant Appearing Before Magistrate

If all else fails, another method which may be employed when the information emanates from a first-time informant is to bring the informant before the magistrate and have him file an affidavit under oath.[104] Since this is no longer hearsay information, *Aguilar* is not applicable. As with any other affiant, the magistrate is free to believe or disbelieve him.

This procedure may not be acceptable to the informant, of course, since his identity is revealed thereby. However, three different approaches have been taken by State courts in an effort to strike a balance. In *People* v. *Stansberry*,[105] the informant was allowed to sign "John Doe" to his affidavit. On appeal to the Supreme Court of Illinois, this procedure was not found constitutionally deficient. In the Wisconsin case of *Rainey* v. *State*,[106] the court upheld a procedure whereby the informant testified to certain facts under oath before a magistrate but did not reveal his name on the record. The New York case of *People* v. *Brown*[107] offered a further variation. In support of a search warrant, an officer testified to the facts given him by his informant. The informant was also produced and confirmed the information to the magistrate off the record, not under oath. The court found this to be a sufficient basis upon which to credit the informant's report.

No Federal case approving such a procedure is known, but two cases to the contrary exist. In *United States ex rel. Pugh* v. *Pate*,[108] the U. S. Court of Appeals for the Seventh Circuit held that a "false-name" affidavit violates the fourth amendment. The only authority the court could refer to, however, was a previous case, *King* v. *United States*,[109] decided in 1960 by the fourth circuit. In the *King* case, the magistrate was actually deceived as to the true name of the affiant and the case was decided primarily on the basis of Rule 41 of the Federal Rules of Criminal Procedure, which at the time required that the warrant state the "names of the persons whose affidavits have been taken in support thereof." Rule 41 no longer requires this.

It is submitted that since the Supreme Court has indicated that under certain circumstances a witness may testify at trial without stating his name,[110] for purposes of merely establishing probable cause, an informant could likewise be relieved of having his true name stated on an affidavit for public review. In such circumstances, the public affidavit could omit his name, with the affidavit bearing his true name being maintained under seal with the court. Another alternative would be for the court to maintain the true name of the informant in a sealed transcript concerning the warrant application.

> **". . . the officer's knowledge of defendant's propensity for committing the crime under investigation . . . can only be employed with other forms of corroboration to establish probable cause."**

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### Sealing the Affidavit

Another method of protecting the informant's identity, at least for a period of time, would be to request a court to seal the affidavit upon which the warrant is based.[111] This procedure might be followed whenever the affidavit would reveal the informant's identity, whether by reason of the fact that he is actually named or that the nature of his information discloses his identity. This would enable an informant to continue his activities undisclosed. As long as the affidavit were unsealed in sufficient time to permit the defendant to challenge the probable cause before trial, it would appear to be a constitutionally permissible procedure.

### Grand Jury

Another apparently seldom-used technique where either the problem of a first-time informant is present or where disclosure of the informant's information might identify him is to employ the grand jury process, with the grand jury returning an indictment and an arrest warrant being issued on the basis of the indictment.[112] At the grand jury proceeding, either the officer could testify to the informant's information or the informant could himself appear and testify. Secrecy is traditionally attached to grand jury proceedings[113] and the testimony given is not generally discoverable by the defense in many jurisdictions.[114] Therefore, the problem of the information identifying the informant would also not be present. Moreover, an indictment by the grand jury is not subject to review by the courts concerning the information upon which they acted.[115]

While an arrest warrant will be issued solely on the basis of an indictment, a search warrant will not. However, the possibility exists that the mere fact that an indictment has been issued might serve as a basis for establishing that the defendant committed the crime, thus providing part of the probable cause to support the search. The only Federal case on this subject, however, holds to the contrary.[116]

### Conclusion

While the *Aguilar* case presents a formidable test for the use of hearsay information, there are a number of paths which have been outlined for the law enforcement officer to follow in converting a tip, which may not in itself constitute probable cause, into one that does. Furthermore, the officer should not feel constrained in thinking that the methods outlined herein are the only acceptable ones. Other approaches await discovery by the resourceful and imaginative officer, and establishment into law through the efforts of the aggressive prosecutor.

FBI

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**Footnotes**

[74] *Supra* note 4, at 109 n.1.

[75] *Supra* note 16.

[76] *Supra* note 7.

[77] *Supra* note 16.

[78] *Id.* at 422.

[79] On this point *see also United States* v. *Branch*, 565 F.2d 274 (4th Cir. 1977).

[80] 510 F.2d 13 (9th Cir. 1974).

[81] 55 Ill.2d 501, 304 N.E.2d 280 (1973).

[82] 11 Md.App. 694, 276 A.2d 680 (Ct. Spec. App. 1971).

[83] *Id.* at 687.

[84] 362 U.S. 257 (1960).

[85] 376 U.S. 528 (1964).

[86] *Supra* note 64.

[87] For a case in which informants corroborating each other was in itself held to give rise to probable cause, *see United States* v. *Hyde*, 574 F.2d 856, 863–864 (5th Cir. 1978).

[88] *See United States* v. *Farese*, 612 F.2d 1376, 1379 (5th Cir.), *cert. denied*, 447 U.S. 925 (1980); *United States* v. *Clements*, 588 F.2d 1030, 1034–35 (5th Cir. 1979), *cert. denied*, 440 U.S. 982 (1979) and 441 U.S. 936 (1980).

[89] *See supra* note 8.

[90] *See United States* v. *Vazquez*, 605 F.2d 1269, 1281 (2d Cir.), *cert. denied*, 444 U.S. 981 (1979); *United States* v. *Clements*, *supra* note 88; *United States* v. *Weinrich*, 586 F.2d 481, 488–90 (5th Cir. 1978).

[91] *United States* v. *Hyde*, 574 F.2d 856, 863 (5th Cir. 1978); *United States* v. *Scott*, 555 F.2d 522 (5th Cir.), *cert. denied*, 434 U.S. 985 (1977).

[92] *See United States* v. *Martin*, 615 F.2d 318 (5th Cir. 1980); *United States* v. *Regan*, 525 F.2d 1151, 1156–57 (8th Cir. 1975).

[93] *See Brinegar* v. *United States*, 338 U.S. 160 (149).

[94] *See supra* note 8.

[95] *United States* v. *Harris*, *supra* note 64.

[96] *See Beck* v. *Ohio*, 379 U.S. 89 (1964).

[97] *Id.*

[98] *See United States* v. *Santarpio*, 560 F.2d 448, 453 (1st Cir.), *cert. denied*, 434, U.S. 984 (1977); *United States* v. *DiMuro*, 540 F.2d 503, 510 (1st Cir. 1976), *cert. denied*, 429 U.S. 1038 (1977); *United States* v. *Fiorella*, 468 F.2d 688, 691 (2d Cir. 1972), *cert. denied*, 417 U.S. 917 (1974); *United States* v. *Williams*, 603 F.2d 1168, 1171 (5th Cir. 1979), *cert. denied*, 444 U.S. 1024 (1980); *United States* v. *Smith*, 462 F.2d 456, 459–60 (8th Cir. 1972).

[99] *See United States* v. *Poulack*, 556 F.2d 83, 87 (1st Cir.), *cert. denied*, 434 U.S. 986 (1977); *United States* v. *Carmichael*, 489 F.2d 983, 986–87 (7th Cir. 1973) (en banc); *Commonwealth* v. *Kaschik*, 235 Pa.Super. 388, 344 A.2d 519 (1975).

[100] *See United States* v. *Spach*, 518 F.2d 866, 871 (7th Cir. 1975); *Thompson* v. *State*, 16 Md. App. 560, 298 A.2d 458 (Ct. Spec. App. 1973).

[101] *Id.*

[102] *Id.* at 462.

[103] *Supra* note 16, at 416.

[104] *United States* v. *Hunley*, 567 F.2d 822 (8th Cir. 1977); *Skelton* v. *Superior Court*, 81 Cal. Rptr. 613, 460 P.2d 485, 490–91 (1969).

[105] 47 Ill.2d 541, 268 N.E.2d 431, *cert. denied*, 404 U.S. 873 (1971).

[106] 74 Wis.2d 189, 246 N.W.2d 529 (1976).

[107] 40 N.Y.2d 183, 352 N.E.2d 545 (1976).

[108] 401 F.2d 6 (7th Cir. 1968), *cert. denied*, 394 U.S. 999 (1969).

[109] 282 F.2d 398 (4th Cir. 1960).

[110] *Smith* v. *Illinois*, 390 U.S. 129 (1968) (concurring opinion).

[111] Fed.R.Crim.P. 57(b); *cf.* Fed.R.Crim.P. 6(e)(4).

[112] Fed.R.Crim.P. 9.

[113] *Pittsburgh Plate Glass Co.* v. *United States*, 360 U.S. 395 (1959).

[114] Fed.R.Crim.P. 6(e)(2), (3).

[115] *United States* v. *Calandra*, 414 U.S. 338 (1974).

[116] *United States* v. *DeFalco*, 509 F.Supp. 127 (S.D. Fla. 1981).

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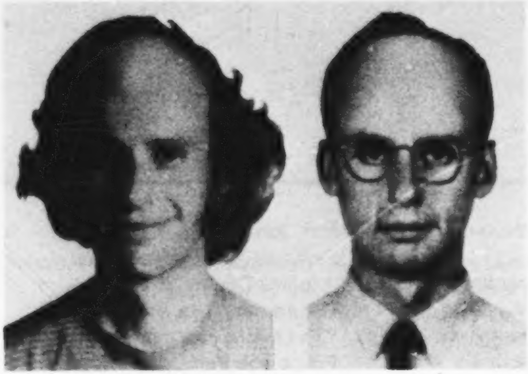
# WANTED BY THE FBI



*Photographs taken 1971 (retouched)*

**Ronald Kaufman**

Ronald Kaufman, also known as Christopher Charles Mohr, Christopher Curtis Mohr, James Edward Jensen, and Charles E. Owens

**Wanted for:**

Malicious attempt to damage and destroy buildings by explosives, National Firearms Act; Federal Reserve Act

**The Crime**

Using the assumed name of Christopher Charles Mohr, Kaufman rented safe-deposit boxes in banks located in the cities of Chicago, Ill., New York, N.Y., and San Francisco, Calif. Kaufman allegedly planted bombs in the boxes, which were individually set to detonate by long range timers using a calendar clock. Anonymous letters describing the planting of the bombs were sent to various newspapers.

On January 13, 1972, a Federal warrant for Kaufman's arrest was issued in San Francisco, Calif.

**Description**

| | |
|---|---|
| Age | 44, born February 5, 1938, Milwaukee, Wis. |
| Height | 5'10" to 5'11". |
| Weight | 160 to 165 pounds. |
| Build | Medium. |
| Hair | Brown. |
| Eyes | Brown. |
| Complexion | Medium. |
| Race | White. |
| Nationality | American. |
| Occupations | Laborer, office worker, mail handler, radio repairman, research associate. |
| Scars and Marks | Pea-sized birthmark on right ankle. |
| Remarks | May wear glasses; stutters when excited; described as extremely intelligent; knowledgeable in the German language; meticulously clean and neat; a loner who maintains a spartan existence; a health foods enthusiast; has been diagnosed in the past as having mental problems and indications of homosexual tendencies. |
| Social Security Nos. Used | 389-34-8220<br>572-98-1398<br>572-98-4495<br>398-34-8220<br>398-34-3220. |
| FBI No. | 242 076 J7. |

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**Caution**

Kaufman may be armed and should be considered very dangerous.

**Notify the FBI**

Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone number of which appears on the first page of most local directories.

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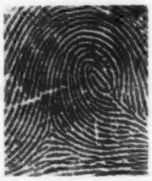

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# Questionable Pattern

The pattern presented this month is questionable and interesting due to the triple looping formations. In the FBI, this pattern is classified as an accidental-type whorl. The reference is necessary because of the questionable nature of the recurve at point A.